R Grier) 127 - 0 J S - C. 1861
Friday. February 8th 1862.
Stansberry - 12 oclock
Stevenson - 2 oclock - 45 m
Monday Stevenson - 12.30
Tuesday - Stanberry 11 20

1343

SUPREME COURT OF THE UNITED STATES.

No. ~~208~~ 127.

PETER CONWAY, JOHN J. SIMMONS, JOHN SEBREE, ERNST KLINSCHMIDT, BERNARD DELMAR, JOSEPH SCHENBURG, THOMAS DADSWORTH, and DANIEL WOLFF, APPELLANTS,

vs.

JAMES TAYLOR, EXECUTOR OF JAMES TAYLOR, DECEASED, and ROBERT AIR.

APPEAL FROM THE COURT OF APPEALS FOR THE STATE OF KENTUCKY.

GIDEON, Printer, 511 Ninth Street, Washington, D. C.

Terry right
Swayne

SUPREME COURT OF THE UNITED STATES.

No. 208.

PETER CONWAY, JOHN J. SIMMONS, JOHN SEBREE, ERNST KLINSCHMIDT, BERNARD DELMAR, JOSEPH SCHENBURG, THOMAS DADSWORTH, and DANIEL WOLFF, APPELLANTS,

vs.

JAMES TAYLOR, EXECUTOR OF JAMES TAYLOR, DECEASED, and ROBERT AIR.

APPEAL FROM THE COURT OF APPEALS FOR THE STATE OF KENTUCKY.

INDEX.

	Original.	Print.
Plaintiffs' Petition	1	1
Exhibit A. Patent to James Taylor	19	11
" XX. Act to Establish the Town of Newport	21	11
" X. Copy of Order Mason County Court	24	13
" B. Deed, Taylor, Sr., to Taylor, Jr	24	14
" C. Act forming County of Campbell	28	16
" D. Act amending Act establishing Ferries	29	17
" E. Order of Campbell County Court of 1807	33	19
" K. Lease, Taylor to Air	35	20
" M. Do. do.	38	22
" N. Act regulating Ferries, 1852	45	26
" O. Bond of Air as Taylor's Lessee	55	32
" P. Bond of Taylor as owner of Ferry	56	32
" S. Ordinance of City Council of Newport, 1853, leasing foot of Monmouth Street to Packet Co	57	33
Affidavit of John M. Caldwell	58	34
" Joseph A. Porier	60	35
" W. J. Berry	61	36
" Geo. W. Doxon	62	36
" Andrew Walker	64	37
" J. H. Winston	64	37
" A. F. Miller	65	38
" Jas. M. McArthur	66	39
" Samuel Perry	67	39
" F. A. Miller	68	40

GIDEON, Print.

	Original.	Print.
Affidavit of R. H. Hayman	69	40
" J. T. Hayman	70	40
" John Simmons	72	42
" Charles Breith	74	43
" G. W. Soward	75	43
" M. Dadsworth	76	44
" John W. Sebree	78	45
Attachment Bond	79	46
Order of Injunction	80	46
Summons and Order of Injunction	82	47
Return of Sheriff	83	48
Answer of Wolff, &c.	83	48
Exhibit Y. Ordinance of Newport City Council, Aug. 18, 1853	101	58
" Q A. Inspection of Commodore	102	58
" Q B. License of Commodore	106	61
" Q Y. Enrollment of Commodore	107	62
" N. Enrollment of Bee	109	63
" O. License of Bee	110	64
" U. License of Belle of Cincinnati	111	64
" O. Enrollment of Belle of Cincinnati	113	65
Answer of City Councils of Newport	114	66
Exhibit 1. Order of Campbell County Court	151	84
Answer of Conway, Simmons, and Sebree	151	84
Exhibit W. Engineer's Certificate of J. W. Simmons	158	88
" X. Pilot's Certificate of J. W. Sebree	159	88
Order filing Affidavit of Plaintiffs	160	89
Affidavit for Rule against Wolff, Boyd, and Fearons	160	89
Order granting Rule	162	90
Rule and Return	162	90
Defendants offer Sup. Answer, and objected to by Plaintiffs	163	90
Order filing Record	163	91
Record of Writ of Error, Taylor against Bartle, 1795	163	91
Answer of Wolff to Rule	168	93
Resolution of City Council of Cincinnati, and License of Commodore	172	96
Order giving force to Decree and allowing Appeal	174	97
Decree	175	97
Deposition of Elijah Pierce	179	98
" Samuel Carter	185	102
" H. H. Mayo	194	106
" S. B. Munson	200	110
" E. B. Bartlett	202	111
Exhibit W W. Copy of Notice	204	111
Deposition of T. G. Tupman	205	112
" G. W. Doxon	208	114

	Original.	Print.
Exhibit No. 50. Lease from Taylor to Doxon	223	121
" No. 100. Lease from Taylor to Doxon	227	123
Deposition of Joseph Temple	231	125
" Eleazar Dunlap	234	127
" J. M. McArthur	240	130
" George Perry	243	131
" S. Campbell	245	133
" W. H. Turner	246	133
" E. W. Larue	250	135
" John Mead	251	136
" P. W. Sarver	261	141
Exhibit A B. Ferry rates of Campbell County Court	263	142
" A C. Ferry rates of Cincinnati	264	143
" A D. Ferry rates of Campbell Circuit Court	267	144
Record of U. S. against Steam Ferry-boat Portland, &c	269	145
Deposition of Samuel Perry	276	150
" T. Clephane	292	158
" R. D. Hayman	296	160
" A. F. Miller	304	164
Exhibit A A. Letter of Attorney General	311	167
Deposition of John Boyd	312	168
" R. B. McCrackin	326	175
" I. F. Hayman	335	180
" C. Breith	347	185
" L. H. Rugg	347	186
Exhibit B B. Lease from Taylor to Rugg	355	190
Deposition of F. A. Miller	359	192
" J. Simmons	365	195
Exhibit D D. Statement of J. J. Simmons	368	197
" C C. Ordinance of Newport Council	371	199
Order granting Appeal	373	200
Supersedeas Bond	373	200
Certificate Clerk C. C. C.	377	202
Proceedings in Kenton Circuit Court,—Taylor's heirs against President and Common Council of Newport	378	202
Order	378	203
Writ of Error	379	203
Power of Attorney from Taylor's heirs	392	210
Summons on Appeal	393	211
Endorsement and Return	394	211
Change of Venue to Kenton Circuit Court	395	212
Set for Trial	395	212
Spos. duces tecum awarded	395	213
Partly heard	396	213

	Original.	Print.
Opinion	396	213
Bill of Exceptions	399	214
Governor's Grant	399	215
Evidence of F. A. Boyd	401	216
Deposition of Gen. James Taylor	403	217
Evidence of W. B. Ross	411	221
Deed, 1793, Taylor to Bartle	412	221
Deed, 1794, Taylor to Kelly	413	222
Deed, 1794, Taylor to Fowler	415	223
Deed, 1794, Taylor to Lewis	416	224
Deed, 1795, Taylor to Benham	418	225
Deed, 1794, Taylor to Mould	419	226
Deed, 1795, Taylor to Justices of Campbell	421	227
Act of Legislature of 1795, &c	423	228
Act of 1834, vesting title in Mayor B	423	228
Act of 1836, Changing Name, &c	423	238
Act of 1849, Changing to President and Common Council	423	228
Deed from Taylor, Sr., to Taylor, Jr	424	229
Evidence of J. H. McClure	428	231
" J. L. Boyd	429	231
" W. B. Ross	432	233
" H. H. Mayo	433	234
" G. W. Seward	436	235
" T. Chamberlin	438	236
" D. Wolff	438	237
" Morris Shipley	439	237
" Samuel Perry	440	237
" James Doxon	440	238
" J. T. Levis	442	239
Bill of Exceptions	443	239
Order granting Appeal	444	240
Appeal Bond	445	240
Clerk's Certificate	446	240
Opinion of the Court of Appeals	446	241
Certificate Clerk do do	451	243
Certificate Clerk Campbell Circuit Court	451	243
Opinion	452	244
Judgment and Order	503	272
Clerk's Certificate	504	272
Petition	506	273
Writ of Error	508	274
Bond	509	276
Citation and service	512	276
Clerk's Certificate	513	277

Pleas before Marshall, Chief Justice Crenshaw, Simpson, and Stites, Judges, composing the Court of Appeals for the State of Kentucky, at the Capitol in Frankfort, 8th February, 1856, and in the 65th year of the Commonwealth.

Upon a writ of error to the judgment of the Campbell Circuit Court.

PETER CONWAY, JOHN J. SIMMONS, JOHN SEBREE, ERNST KLINSCHMIDT, BERNARD DELMAR, JOSEPH SCHENBURG, THOMAS DADSWORTH and DANIEL WOLFF, Appellants,

vs.

JAMES TAYLOR, Executor of JAMES TAYLOR, deceased, and ROB'T AIR, Appellees.

Be it remembered, that on the day of 185 the following transcript of the record from Campbell Circuit Court was filed.

Pleas before Alvin Duvall, Judge of the Campbell Circuit Court, at the Court House in Alexandria, August 2d, 1854.

JAMES TAYLOR, Executor of James Taylor, deceased, and Rob't Air, Plaintiffs, *against* PETER CONWAY, John J. Simmons, John Sebree, Ernst Klinschmidt, Bernard Delmar, John Schenburg, Thos. Dadsworth, Daniel Wolff, Pres., and Common County of City of Newport, Defendants.	Petition in Equity.

Be it remembered, that heretofore, to wit, on the 30th day of January, 1854, the plaintiffs filed their petition in equity against the defendants, in the words and figures following:

The plaintiffs, Robert Air and James Taylor, the latter executor of James Taylor, deceased, state that the Commonwealth of Virginia, on the 20th April, 1787, granted to James Taylor, of Carolina county, Virginia, a tract of 1,500 acres of land, situate in what was then called Fayette county, subsequently Mason county, but now Campbell county; which grant was made on a regular survey dated 8th June, 1785, and in the bounds of the Commonwealth of Kentucky, and described and bounded as follows:

Beginning at a sycamore and forked maple, standing on the point between the Licking and the Ohio at their confluence, and running thence up Licking, binding thereon, as it meanders, S. 14, E. 80 poles, S. 14, W. 85 poles, S. 24½, E. 76 poles, S. 39, E. 121 poles, to a sugar tree, hoopwood, and two hickories, on the bank of a creek

below a small gut; thence N. 46½, E. 802 poles, to a lynn-buckeye and poplar; thence N. 43° 30′, W. 369 poles, to a beach sugar tree, and buckeye on the bank of the Ohio river; thence down the same and binding thereon, as it meanders, S. 62½, W. 74, S. 25, W. 161 poles, S. 40, 162 poles, S. 51, W. 120 poles to the beginning. A copy of this patent is filed herewith, marked A, (page 11,) and prayed to be considered as part of his petition.

The plaintiffs represent that from the date of said patent the said tract of one thousand five hundred acres was taken possession of, claimed, owned, and occupied by the grantee therein. They further represent that the said patentee, on the 14th day of February, 1792, surveyed and laid out of this fifteen hundred acres the then Town but now City of Newport, and caused a plat of said town, as thus laid out and surveyed by him, to be made. That said Town of Newport as thus surveyed, platted, and laid down, did not extend to the Ohio river, but a long and narrow margin of ground intervened between the northern boundary of said Town of Newport, as thus laid out and designated by said proprietor, James Taylor, and the Ohio river, which strip was expressly reserved to himself.

The plaintiffs represent that a re-survey and re-platting of the Town of Newport was made by the proprietor in August, 1795, which was recorded, and now constitutes the present plat or map of said city as it was originally laid out and established; and on 14th December, 1795, an act was passed (1st Littell, 280,) by the Legislature of Kentucky, incorporating the Town of Newport, and appropriating one hundred and eighty acres of ground as designated, laid out, and platted, by the proprietor and patentee, James Taylor, and under this plat the sale of lots was made subject, however, to certain conditions endorsed on said plat and made a part of it by said proprietor.

The plaintiffs further represent, that no part of the strip of ground in front of the said Town of Newport, as laid out and designated on the plats of 1792, or that of 1795, and running the whole length of said town, and between its northern boundary and the Ohio river, was ever at any time laid out into streets and alleys, nor was the legal title thereto ever vested in the original trustees by the proprietor or the act of the 14th December, 1795, incorporating said town, nor has it ever been vested by any subsequent acts in said trustees.

They expressly state, however, by the express words of the act of 14th December, 1795, herewith filed, marked X X, (see page 11,) that the ground between the lots and river Ohio, and Licking river, as exhibited by the plat, should remain forever for the use and benefit of said town as a common, reserving to the said proprietor, James Taylor, his heirs, and assigns, every advantage and privilege which he had not disposed of, or to which by law he would be entitled.

They represent that the entire land in front of the Town of New-

port, as laid down on the plat of 1792 and 1795, as well as the land in front of the City of Newport, as since extended and now existing, together with the contiguous land on the Ohio river, for two miles above said Town and City of Newport, is included in the patent of fifteen hundred acres granted by the Commonwealth of Virginia to James Taylor, already referred to, and has been continuedly and uninterruptedly held, claimed, and occupied by him and his vendue adversely to the world for the last sixty-two years.

The plaintiffs state, that the whole of said fifteen hundred acres included in the patent, marked Exhibit (A,) was, in the year 1792, at the period of laying out said Town of Newport included within the limits of what was then Mason county, State of Kentucky, and so continued during the year 1793. And that at the January Term, 1794, of the Mason County Court, (the said Court being clothed with jurisdiction and power to establish and grant ferries,) a ferry was established and granted to James Taylor, across the Ohio river, on his landing in front of the Town of Newport, which said order of said Court was legal, valid, and binding, by the laws concerning ferries then in force in the Commonwealth of Kentucky, a copy of this order marked X, (page 13,) is filed as part hereof.

They represent, that under said order the said James Taylor, Grantee, at considerable expense and cost placed a ferry-boat, with the necessary fixtures and hands, on the Ohio river, in front of Newport, and continued to run said ferry from the period of its grant until the 8th day of June, 1799.

They represent, on 8th day of June, 1799, the said patentee conveyed to his son, James Taylor, of Kentucky, (the ancestor and testator of one of the plaintiffs,) that portion of the fifteen hundred acres included in his patent, already referred to, bordering on the Ohio and Licking rivers, not included in the corporate limits of the then Town of Newport, but all the ground surrounding and adjacent to it, including the strip of ground between the Ohio river and the northern boundary of the Town of Newport, and running up said river to Duck creek, one mile above the Town of Newport as then laid out.

For an accurate description of the ground here conveyed, reference is here made to a copy of said deed, last referred to, marked Exhibit B, (on page 14,) filed herewith as part hereof.

The plaintiffs state that the grantee, in the last mentioned deed, took possession of all the land therein described, as well as the ferry established on a part of said land in front of the Town of Newport, by the Mason County Court, and which was included in said deed, and that said grantee held and occupied and claimed as his own, adversely to the world, continuedly and uninterruptedly, the said land on the Ohio river, extending from his most eastwardly boundary on the Ohio river to the confluence of Ohio and Licking rivers, and including the entire strip of ground between the Ohio river and

the City of Newport, together with the ferry established thereon, from 8th June, 1799, until his death in Nov., 1848; and that the same has been held by one of these plaintiffs as his executor, and by the other as lessee, ever since, making a continuous, uninterrupted, adverse possession of said strip of ground in front of said town, with the ferry erected thereon, of more than 54 years.

The plaintiffs represent, that on the day of , the General Assembly established, in the County of Campbell, a copy of which said act is here referred to, marked C, (page 16,) and filed herewith as part hereof; and that, on the day of , they passed a further act in relation to ferries, requiring an application for the establishment of all ferries to be made to the County Court of the Counties of the Commonwealth, in which the proposed ferry was to be established; and this act further provided, that ferries on the Ohio river should and could only be granted to those seized with a fee simple title to the land on which the proposed ferry should be established; a copy of this act is also referred to and filed herewith, as Exhibit D, (page 17,) and prayed to be taken as part hereof.

They represent, that after the establishment of the County of Campbell, James Taylor, the grantee in the last-mentioned deed, did, at the June Term of the Campbell County Court, apply to said Court for a ferry franchise on his land on the Ohio river, and in front of said Town of Newport, across said river, and which was granted to him by said Court. A copy of this order is filed herewith, marked as Exhibit E, (page 19,) as part hereof.

They state, that his application was rendered necessary by the Act of the Legislature already referred to, requiring applications for ferries to be made in the respective counties in which they were established.

The plaintiffs further represent, that the said James Taylor, from the date of his deed on 8th June, 1799, to the period of his death in 1848, continuedly and uninterruptedly kept the said ferry across the Ohio river, at Newport; that said ferry was kept up at great expense; and that a steam ferry-boat was placed on said ferry in the year , and has been kept there ever since; and that said ferry has been kept up in strict accordance with all the requisitions of the law, in each and every particular, from 1799 to the present time, by said James Taylor in his life time, and by his legal representatives since his death; and that no other ferry has, during that period, ever been established on said landing in front of said City of Newport by law, as the legal title to said ground in front of said city has, since 1799, vested and continued vested in James Taylor during his life, and one of these plaintiffs as his executor since his death.

The plaintiffs state, that on the 28th day of June, 1830, the then acting and legally elected and constituted Trustees of Newport ap-

plied to the County Court of Campbell for the grant of a ferry across the Ohio river, in front of the Town of Newport, which application was refused; from which decision an Appeal was taken to the Court of Appeals. of Kentucky, and the tribunal of last resort in that State, where said decision of the County Court (6 J. J. Marshall, 134) was affirmed.

The plaintiffs state, that by the decision of the Court of Appeals in the case last cited, the right of James Taylor to the entire strip of ground between the Ohio river and the entire front of the City of Newport were adjudicated on and settled. In the same case it was judicially ascertained and determined, that by the Act incorporating the Town of Newport in 1795, already referred to, the original patentee, James Taylor, was not divested of the legal title to the strip of ground between the Ohio river and the Town of Newport; and that the title to this strip of ground never vested in the trustees of said town, but passed, by the deed, in 1799, already referred to, from James Taylor, of Virginia, the patentee, to his son, James Taylor, of Kentucky.

It was further judicially determined and ascertained, in the same case, that the "Esplanade," a right of common in this strip of ground, as dedicated by the proprietor for the use of the Town of Newport, was not inconsistent with a reservation of the legal title to the strip in himself by the proprietor, and did not divest him of the title, or any of his rights to the landing or ferry franchise; both of which were decided to have been retained by him, and to have passed to his son, James Taylor, by the deed in 1799.

It was further adjudicated and settled, that the exclusive right of James Taylor and his grantees, to a ferry franchise, was not inconsistent with a dedication of the ground on which said ferry was established as a common, and that a ferry right was an exclusive privilege, not an incident of a common, and that by the Legislative act of Incorporation, of the Town of Newport, a contract was entered into between the Legislature and the Commonwealth of Kentucky, and James Taylor, the proprietor. That the latter had a right to propose his terms of retaining such rights and precedent emoluments as were not inconsistent with his grant of this strip as a common, and the Legislature accepted the terms; it was their duty to secure to him these rights and purchases thus reserved, and which it is decided the act of incorporation effectually did, and that the exclusive right to these ferries, and all subsequent ones, were exclusively his and based by his deed in 1799.

A copy of this record, from the Court of Appeals, of the Trustees of Newport against Taylor, with its entire contents, is filed herewith, as part hereof, marked as exhibit F, together with a copy of the opinion of the Court, marked H.

The plaintiffs state that James Taylor, the grantee, in said deed of 1799, already referred to, departed this life on 7th day of

November, 1848, leaving his last will and testament, which has been duly proved and probated by the Campbell County Court, where said testator lived and died, and James Taylor, one of the plaintiffs, has qualified as his executor; a copy of which will is filed herewith as part hereof, marked Exhibit I.

The plaintiffs state, that by the terms of said will, testator directs said ferry across the Ohio river at Newport, and all ferries that might hereafter be established on said land belonging to him, and in front of Newport, should be rented out by his executor during his life, and at the death of his executor, the said ferries, with the Esplanade, are devised to the four children of testator for life, and at their death to their children.

The plaintiffs state that since the death of James Taylor, testator of one of the plaintiffs, viz: at December Term, 1848, and before the will of James Taylor had been probated, and during a contest over it, the County Court of Campbell granted the ferry privilege to John W. Tibbatts, and Ann, his wife, George T. Williamson, and Jane M., his wife, H. T. Harris, and Keturah L., his wife, and James Taylor, one of the plaintiffs, who gave bond in Campbell County Court, but who never took possession or made any lease of the said ferry, as the lease executed by General James Taylor to Robert Air had not expired.

This lease from General Taylor to Robert Air was dated 10th October, 1844, of said ferry and the landing, and was to commence on 1st April, 1845, and continue 5 years, and which was afterwards extended 2 years in addition to the terms of its continuance. A copy of this lease is filed herewith, marked , as part hereof marked (K,) p. 20, as part hereof, and subsequently on 1st April, 1853, a new lease was executed by James Taylor, as executor of James Taylor, deceased, to his co-plaintiff, Robert Air aforesaid, of said ferry and landings, for 6 years, from the said 1st day of April, 1853, to 1st April, 1859, which lease is still in force, valid, and binding in all its parts, and under which said ferry is now run. A copy of this lease is filed herewith as part hereof, marked M.

The plaintiffs state that the statute of Kentucky, on the subject of ferries, were revived in 1852, and that, by its provisions, certain lands were required of owners and keepers of ferries, which act is still in force. A copy of this act is filed herewith, marked N.

The plaintiffs state that they each executed bonds at the March and April Terms, 1853, of the Campbell County Court, copies of which are filed herewith as part hereof, marked O and P.

The plaintiffs state that they have been at a very heavy cost and expense in improving the landings and McAdamizing and grading the same.

That one of the plaintiffs, Robert Air, from the period of his first lease to the present time, has been in continued possession of the said landings and ferries, and so continues under his lease.

He is required to keep running two large, extensive, and safe ferry-boats, handsomely fitted up, and which are running from daylight of each and every day until midnight, at successive intervals of only a few moments during the day, and that his expenditures for requisite engines, firemen, and hands, amount to a large annual outlay, in addition to his rent due under his lease; that he has looked to the increasing population of Newport, the length of his lease, and the stipulations and covenants of his co-plaintiff, to protect him against the injury of a new and rival ferry, for some reimbursement for his immense outlays and necessary expenses.

They state that the two steam ferry-boats, as now run by plaintiff, are amply sufficient to accommodate all who cross at Newport, and that the establishment of another ferry, if it could be legally accomplished, would utterly destroy all benefit of the ferry franchise, and compel one of the plaintiffs to surrender his lease or submit to overwhelming ruin, while it would, under the franchise, be comparatively worthless to the estate of James Taylor, dec'd.

The plaintiffs state that at the February Term, 1850, the President and Common Council of the City of Newport, stealthily, and without the knowledge of the plaintiffs that any such effort would be made, applied to the Campbell County Court for a ferry franchise across the Ohio river, from the landing in front of the Town of Newport to the opposite shore, all of which was then in the occupancy of one of these plaintiffs, Robert Air, under his lease from his co-plaintiff's testator, James Taylor, and already referred to.

The said Court, at said term, granted the franchise to said city, from which a writ of error was sued out to the Circuit Court by the children and heirs of James Taylor, deceased. The decision of the County Court was reversed by the Circuit Court, and the case was again taken by the City of Newport to the Court of Appeals, and the decision of the Circuit Court, denying the President and Common Council a right to a ferry, was affirmed. A copy of this [19] record, together with a copy of the opinion of the Court of Appeals, is filed herewith, marked R, and prayed to be taken as a part hereof.

By the last decision the former decision is again reaffirmed as conclusive on the rights of both the City and Town of Newport, as to the legal titles to the Esplanade or wharves, or to a right of ferry or ferries, or any part of said landing in front of said city.

After two legal and conclusive constructions of the same statute, by a Court of final resort, by which the exclusive right to this ferry franchise, and landings in front of Newport had been so clearly maintained, these plaintiffs, as lessor and lessee, had hoped they would have been permitted to enjoy the franchise and the possession of this landing.

They had hoped, after a continued, uninterrupted, and adverse possession and running of the ferry, from January, 1794, to Janu-

ary, 1854, by themselves, and by those under whom they claim, they had hoped they would have been spared any further litigations touching the public landing or front of the City of Newport and their ferry franchise established thereon, and more especially as they [20] have always granted to the Town and City of Newport the free use of said landing as a common, and have never exacted from the City of Newport, or any of its officers and inhabitants any charge for wharfage, or any charge whatever for landing either property or commodity of any sort thereon.

But the plaintiffs charge that the defendants, Ernst F. Klinschmidt, Bernard Ditmar, Joseph Schenburg, Thomas Dadsworth, and Daniel Wolff, together with the President and Common Council of the City of Newport, have confederated for the evil and fraudulent purpose of destroying entirely the said ferry franchise in charge of one of these plaintiffs, James Taylor, as ex'or, and in possession of the other by leave of him, as already set out by running, without authority of law, and without shadow or color of right to the public landing in front of the City of Newport, a steam ferry-boat from Cincinnati to Newport, called the "Commodore," which is already completed and put on said river, with the view of landing on the [21] ground belonging to the estate of Taylor, dec'd, at the foot of Monmouth street, and running said steamer Commodore as a regular ferry-boat for the transportation for compensation of passengers from Cincinnati to Newport.

The plaintiffs represent that the said City of Newport, through its trustees, have, for a nominal consideration, without the shadow of claim or color of title, in flagrant violation of law, and utter disregard of plaintiffs rights, leased or attempted to lease that portion of the landing in front of the City of Newport, and in front of the termination of Monmouth street, belonging to James Taylor, dec'd, for the sum of one dollar per year to the said Klinschmidt, Ditmar, Schenburg, Dadsworth, and Wolff, who, under the style of Cincinnati and Newport Ferry Company, have placed said steam ferry-boat "Commodore" on said Ohio river, and are now engaged in running said steam ferry-boat in transporting passengers from Newport to Cincinnati for compensation, and that this has been done with the view of totally destroying the rights of one of these plaintiffs (James Taylor) to said landing and exclusive ferry fran- [22] chise, and of preventing his co-plaintiff, Robert Air, from enjoying the results of his immense outlay and expenditures on said ferry, and under said leases, and the of said ferry.

A copy of the Ordinance, making this lease, from the President and Common Council of the City of Newport to said Packet Company, is filed herewith, as part hereof marked (S.)

The plaintiffs allege and charge that the said President and Common Council of the City of Newport have confederated with the Cincinnati and Newport Company with the view and intention of

utterly destroying said ferry franchise of plaintiffs, and of attempting illegally, wrongfully, and fraudulently to do that which, by two separate decisions of the Court of Appeals, it has been decided they had no right or authority to do.

The plaintiffs represent that the ground of Monmouth street, attempted to be leased, is a part of the strip of ground originally reserved by the proprietor and patentee, James Taylor, and that [23] Monmouth street was laid down in the original plat of 1792 and 1795 of said town, and that said town or city was never vested with the legal title thereto, and has never had the legal title thereof, except as a part of the public common, and that said landing, thus attempted to be leased is included in the lease of the plaintiff, James Taylor, to his co-plaintiff, Robert Air, and is now and has always been in his possession and under his control.

They represent that the said ferry, so far as the number of its boats are concerned, as well as all municipal regulations and conveniences, together with the rates of toll, are, by an Act of the Kentucky Legislature, approved January 7, 1852, vested in the Campbell County Court, a copy of which is filed as part hereof as Exhibit marked N.

They say that said County Court of Campbell have required two large steam ferry-boats to be kept constantly on said ferry, and that the said *boat* has power to order as many as the public convenience may [24] require, and that these plaintiffs are now, have been, and always will be ready and willing to comply with any legal orders of said Court touching said ferry.

They expressly state, however, that the public convenience does not require another ferry or the furnishing other boats, as an additional boat has been placed there since the last decision of the Court of Appeals between the City of Newport and Taylor's heirs.

They state that if the defendant be allowed to run said steam packet or boat, it will be an utter destruction of plaintiffs' ferry franchise. An appropriation, against his consent, of his public landing, without any compensation to him by the City of Newport, and utter destruction and violation of his private rights, and irreparable injury and destruction of the rights of his co-plaintiff, Robert Air, under his lease.

They state that there has been no grant of a ferry to the defendants, or any of them; that they have no right to run said ferry, and no act of incorporation in Kentucky or Ohio incorporating said Com- [25] pany; but that they are running this boat as a rural ferry, and that they are transporting passengers from Newport to Cincinnati for compensation, and from Cincinnati to Newport, in violation of law, without any right or privilege to establish a ferry, in flagrant and direct violation of plaintiff's rights; and that said defendants named, are attempting to seize and appropriate his landing, without

authority, against his consent, in palpable violation of law, and in conflict with the constitutional rights of plaintiffs.

The plaintiffs represent that the said defendants, Ernst F. Klinschmidt, Bernard Delmar, Joseph Schenburg, Thomas Dadsworth, all of whom are non-residents of Kentucky, have, with Daniel Wolff, associated themselves together under the style of the Newport and Cincinnati Ferry Company, and as such, have built the said steam ferry-boat Commodore, and placed the defendant, Peter Conway, as master of said steam ferry-boat Commodore, the defendant, John J. Simmons, as chief engineer, and John Sebree as pilot, on the same, and are now running the same as a regular ferry-boat between Cin-
[26] cinnati and Newport, charging for the transportation of passengers between the two cities, and thereby doing irreparable injury to the ferry franchise of plaintiffs, in addition to the illegal use of their landings without their consent and against their wishes; and that the said ferry-boat of said defendants is landed within one square of that of plaintiffs' ferry, and in direct violation of the penal statutes of Kentucky, for the protection of the rights of those to whom ferry franchises have been granted on the Ohio river, and which act has been already referred to as part hereof.

They state that said defendants have been engaged under the style of said Cincinnati and Newport Packet Company, in running said ferry-boat for two weeks, and that they have received about the sum of seven hundred dollars from the receipts of the running of said ferry-boat, and all of which sum, together with any amount they shall hereafter receive, justly belongs to one of these plaintiffs;
[27] and they are indebted in the further sum of one hundred and fifty dollars for landing at the wharf of plaintiffs.

They pray that an account may be taken of the amount due for the use of said landing by said Company, together with the amount received as the gross receipts for the transportation of passengers on said ferry; and that they have a judgment for the same, and that said steam ferry-boat Commodore be seized and attached, and, on a final hearing, be sold to pay the sum thus found due; and that said defendants, and each and all of them, be enjoined from running said ferry-boat Commodore, and all other ferry-boats, between Cincinnati and Newport; and that said lease between the President and Common Council of the City of Newport and said Cincinnati and Newport Packet Company be cancelled, and the rights of plaintiffs to said landing in front of Newport and ferry franchise be quieted, and they pray for proper relief.

WALL & FINNELL,
JOHNSON & ROBINSON,
MOREHEAD & BROWN,
MOREHEAD & STEVENSON,
Att'ys for Plffs.

[28] The following are the Exhibits referred to in the foregoing petition, viz:

[A. Patent to Jas. Taylor.]

Exhibit marked A, Patent to J. Taylor.

EDMOND RANDOLPH, ESQ.,
Governor of Virginia.

To all to whom these presents shall come, greeting: Know ye that by virtue and in consideration of the military warrants, numbers 369, 372, and 373, made the 14th day of February, 1780, being issued under the King of Great Britain's proclamation of 1763, there is granted, by the said Commonwealth, unto James Taylor, a certain tract or parcel of land, containing one thousand five hundred acres, by survey bearing date the 8th day of June, one thousand seven hundred and eighty-five, lying and being in the County of Fayette, in the forks between Licking and Ohio, and bounded as followeth, to wit: Beginning at a sycamore and forked maple standing on the point between Licking and the Ohio at their confluence, and running from thence up, Licking binding thereon as it meanders, S. 14°, E. 40 poles; S. 14°, W. 85 poles; S. 24½, E. 76 poles; S. 39°, E. 121 poles to a sugar tree hoopwood, and two hickories on the bank of the creek, below the mouth of a small gut; thence N. 46½, E. 802 poles to a linn buckeye and poplar; thence [29] N. 43° 30′, W. 369 poles to a beech, sugar tree, and buckeye, on the bank of the Ohio; thence down the same, binding thereon as it meanders, S. 72½, W. 74 poles; S. 39½°, W. 200 poles; S. 25°, W. 161 poles; S. 40°, W. 162 poles; S. 51°, W. 120 poles to the beginning, with its appurtenances. To have and to hold said tract of land with its appurtenances to the said James Taylor and his heirs forever. In witness whereof, the said Edmond Randolph, Esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said Commonwealth to be affixed, at Richmond, on the 20th day of April, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Commonwealth the eleventh.

E. RANDOLPH.

A true copy, attest, E. A. McCURDY, R. L. O.
By RICH'D SHARP, D. R.

[An act to establish the Town of Newport.]

Exhibit XX. An Act to establish the Town of Newport, passed Dec. 14th, 1795, viz:

An Act to establish to Town of Newport.

Whereas, it is represented to the present General Assembly that [30] one hundred and eighty acres of land, the property of James

Taylor, in the County of Campbell, has been laid off into convenient lots and streets by the said James Taylor, for the purpose of a town, and distinguished by the name of Newport, and it is judged expedient to vest the said land in trustees and establish the said town,

SECTION 1. Be it therefore enacted by the General Assembly, That the land comprehending the said town, agreeably to a plat made by John Roberts, the Deputy Surveyor of said county, and re-survey of said town the 20th of August, 1795, and lodged in the office of said county, to be recorded in the Court of said county, be and the same is hereby vested in Thomas Kennedy, Washington Berry, Henry Brasher, Thomas Lindsey, Nathan Kelly, James McClure, and Daniel Duggan, who are hereby appointed trustees for the same, except such parts as are hereby excepted, and the said trustees, or a majority of them, are authorized to make such rules for the regular building on the lots as to them shall appear most con-
[31] ducive to the benefit and convenience of the inhabitants, and have full power to settle and determine all disputes concerning the bounds or lines of all lots in the said town; they shall have power to form rules for improving, clearing, and keeping the streets in good order, by applying to the County Court, who shall appoint an overseer, with power to call on the inhabitants, for that purpose, and any persons, so called on, neglecting or refusing to attend, shall forfeit the sum of one dollar, to be recovered before any Justice of the Peace within the county.

SECTION 2d. And be it further enacted, That whosoever shall erect any nuisance within the limits of said town, or cause any obstructions in the streets or highways of the same, and not removing the same upon notice from any one or more of the trustees of said town, shall forfeit and pay the sum of three dollars for every twenty-four hours such nuisance or obstruction shall remain after such notice.

SECTION 3d. In case of the death, resignation, removal out of the county, or other inability of any one or more of said trustees to act,
[32] such vacancy shall be filled up by a majority of the remaining trustees, with suitable persons for that purpose, who shall have the same power as those *hereinbefore* appointed, and the said trustees shall keep a fair record of their proceedings, and may appoint a clerk amenable to said trustees, who may make him allowance equivalent to his services.

SECTION 4th. And the said trustees shall have power to levy and collect from the inhabitants any sum not exceeding twenty pounds annually, for the purpose of defraying the necessary expenses attending the discharge of their duty, in case such sum does not arise from fines and forfeitures.

SECTION 5th. A majority of the said trustees shall have power to convey the lots not yet deeded to the respective proprietors in fee, or producing a receipt from James Taylor, or his agent, for the

original purchase money, and the deeds heretofore made by the agent or agents of the said James Taylor, to the purchasers of lots [33] in said town, shall be confirmed, and remain as valid as if the said town had been originally vested in said trustees.

SECTION 6th. If at any a surplus or deficiency should appear in any of the general squares within said town, it shall be in the power of said trustees to apportion, in the most equitable manner, amongst the proprietors of lots within this square, such surplus or deficiency.

SECTION 7th. And be it further enacted, that such part of said town as lies between the lots and the river Ohio and Licking, as will appear by a reference to the said plat, shall forever remain for the use and benefit of the said town for a common, reserving to the said James Taylor, and his heirs and assigns, every advantage and privilege which he has not disposed of, or which he would by law be entitled to.

SECTION 8th. Be it further enacted, That nothing herein contained shall be so construed as to prevent any person who may have a more legal or equitable right to the lands aforesaid, from recover-[34] ing the money arising from the sale of the said lands from the persons who may have received the same.

Approved, Dec. 14th, 1795.

I, James P. Metcalfe, Secretary of the State of Kentucky, do certify that foregoing is a true copy of the act establishing the Town of Newport.

Given under my hand, and the seal of my office, the 19th day of January, 1854, and in the 62d year of the Commonwealth.

[L. S.] J. P. METCALFE, Secretary of State.
By GRANT GREEN, Ass't Secretary.

[Copy of Order, Mason County Court.]

Exhibit X. Copy order Mason Ct'y Court.

State of Kentucky, sct.

At a Court continued and held for Mason County, the 29th of January, 1794,

Upon motion of James Taylor, a public ferry is established upon his lands over the Licking river, in the County of Mason, to the lands on the opposite shore, the lands of Todd or Kennedy, and to have the following rates, (to wit:) for horse and man, 6d.; for horned cattle, 2d. per head; for small stock, per head, 1d., empty wagon, 1d.; loaded wagon, 2d.

A copy. Att. ROBT. A. COCHRAN, C. M. C'ty C't.

[35] Also,

Upon motion of James Taylor, a public ferry is established from his lands on the Ohio, over the same, in front of the Town of Newport, to have and receive the same fare as is allowed from the opposite shore.

A copy Teste, ROBT. A. COCHRAN, C. M. C'ty C't.

[J. Taylor, Sr., Deed to J. Taylor, Jr.]

Exhibit B. Deed from Taylor, Sen'r, to Taylor, Junior.

This indenture, made this eighth day of June, one thousand seven hundred and ninety-nine, between *between* James Taylor, the elder, of the State of Virginia and County of Caroline, and his son, James Taylor, the younger, of the State of Kentucky and County of Campbell, witnesseth, that the said James Taylor, the elder, for in consideration of his love and affection for his said son, of his previous promise to do so, whereby his said son hath been induced to erect expensive buildings and make sundry improvements on the tract of land herein presently mentioned, and of five shillings current money of Virginia, by the said James Taylor, the younger, to him in hand paid, (the receipt whereof he doth hereby acknowledge,) hath given, [36] granted, bargained, and sold, and hereby give, grant, bargain, and sell unto him, the said James Taylor, the younger, one certain tract or parcel of land, situate, lying, and being in the State of Kentucky and County of Campbell, in the fork of Ohio and Licking rivers, adjoining the Town of Newport, being part of a patent for fifteen hundred acres of land, heretofore granted to the said James Taylor, the elder, and bounded as followeth: Beginning at a sugar tree and two hickories on the bank of Licking river, below the mouth of a branch, being the upper corner of a patent formerly granted to the said James Taylor, the elder, on the said river Licking; running thence along the back line of the said pa'ent North 45° E. 446 poles, to a white oak, elm, and beach, in the said back line, across Duck creek, near a fork thereof; thence N. 40°, W. 327 poles, so as to include Duck creek, to five beech pointers, on the back of Ohio river; thence down the windings of Ohio river, S. 30½, W. 52 poles, S. 32½, W. 89 poles, S. 42½°, W. 40 poles, to a large poplar, standing also on the bank of the river Ohio, by which river the land hereby conveyed is bounded on the three last-mentioned [37] courses, which poplar is the upper boundary of the town of Newport, on the Ohio; thence along the several boundaries along the land side of the said Town of Newport, as established and ascertained by law and the recorded plat thereof in the Court of Campbell County, in the State of Kentucky, until the line strikes Licking river: and thence up the said river Licking, according to its several courses and meanders, to the beginning, so as to include all that part of said patent lying below the line of the land hereby conveyed, which runs above

Duck creek, except so much thereof as hath been appropriated, in manner aforesaid, for the Town of Newport, and also all right and title which the said James Taylor, the elder, now hath or is entitled to, or may hereafter have or be entitled to, of, in, or to any ferry or ferries from the said Town of Newport, and every part thereof, over and across both said Ohio and Licking rivers, with all and singular the advantages and privileges, emoluments, and appurtenances of the said tract of land, and the said ferry or ferries, hereby given, granted, sold, and conveyed, and every part and parcel thereof, to [38] have and to hold the said tract or parcel of land hereby conveyed, and all and singular its appurtenances, be the same more or less, together with the said ferry or ferries, with all and singular the advantages, privileges, and emoluments thereunto belonging, unto him, the said James Taylor, the younger, his heirs and assigns forever, in free, unconditional, and absolute fee simple, and to his and their own proper use and behoof; and the said James Taylor, the elder, his executors and administrators, the said land and premises, with its appurtenances, and the said ferry or ferries, with all and singular the advantages, privileges, and emoluments thereunto belonging, and all his, the said James Taylor, the elder's, title in or to the said ferry or ferries, as now existing, as well as any right he may have (except for this conveyance) hereafter to obtain any ferry or ferries, from any part of the Town of Newport, unto the said James Taylor, the younger, his heirs and assigns, will hereafter warrant and defend against the right, title, claim, or demand of any [39] person or persons claiming by, from, or under him, the said James Taylor, the elder, but not against the right, title, claim, or demand of any *any* other person or persons whatsoever. In testimony whereof, the said James Taylor, the elder, hath hereunto subscribed his name and affixed his seal, the day and year first above written.

JAMES TAYLOR, [SEAL.]

Signed, sealed, and delivered in the presence of } Mem. The obliterations or interlineations opposite the figures 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, were all made before the execution of this deed.

JOHN TALIAFENO,
MARK C. WOODFORD,
T. WOODFORD.

VIRGINIA, sct.

At a Court held for the County of Carolina, in the State aforesaid, at the Court-house, on Thursday, the 11th day of June, 1799, the within deed, between James Taylor, the elder, of the one part, and James Taylor, the younger, of the other part, for land lying in the County of Campbell, in the State of Kentucky, was acknow-

ledged by the said James Taylor, the elder, to be his act and deed, and ordered to be certified. In testimony whereof, I, William Nel-
[40] son, Clerk of the said County Court, have hereunto set my name and affixed the seal of said county, this 14th day of June, 1799.

[L. S.] WILLIAM NELSON, Cl'k Ct.

At a Court held for Campbell County, on Monday, the 9th day of September, 1799, this deed of gift from James Taylor, the elder, of the County of Carolina and State of Virginia, to James Taylor, the younger, of the County of Campbell and State of Kentucky, was presented in Court, certified by William Nelson, Clerk of the said County of Virginia aforesaid, to have been duly acknowledged, in open Court of the said county, by the said James Taylor, the elder, and, on motion of the said James Taylor, the younger, is ordered to be recorded, and is recorded.

Teste, EDMUND TAYLOR, D. C. C. C.

STATE OF KENTUCKY, Campbell County. } Sct.

I, James H. Parker, Clerk of the Campbell County Court, certify, that the foregoing deed from James Taylor, the elder, to James Taylor, the younger, is truly copied from the records in my office.
[41] Given under my hand, this 3d day of January, A. D. 1854.

JAMES H. PARKER, Cl'k.

[An Act forming Campbell County.]

Exhibit C.

An Act forming a New County from the Counties Harrison, Scott, and Mason, approved Dec. 17, 1794.

From and after the 10th day of May next, all those parts of the Counties of Harrison, Scott, and Mason, within the following bounds, viz.: beginning on the Ohio, at the mouth of Locust creek, on the lower side thereof, thence in a direct line to the mouth of the north fork of Licking, thence by a direct line to the mouth of Crooked creek, on the south fork of Licking, thence up said Crooked creek to the head of the main branch thereof, thence west to the dividing line between the Counties of Scott and Woodford, thence along that line to the mouth of Big Bone Lick creek, on the Ohio river, to the beginning, shall be one distinct county, and be known and called by the name of Campbell.

I, James P. Metcalfe, Secretary of State for the Commonwealth

[42] of Kentucky, do certify that the foregoing is a true copy of an Act establishing the County of Campbell.

Given under my hand and the seal of my office, the 19th day of January, 1854, and in the 62d year of the Commonwealth.

[L. S.] J. P. METCALFE,
Secretary of State.
By GRANT GREEN,
Ass't Secretary.

[An Act respecting Ferries.]

Exhibit D.

An Act to amend an Act, entitled an Act to amend and reduce into one the several Acts respecting the establishment of ferries, approved Dec. 22d, 1806.

Whereas, it is represented to the present General Assembly that the County Courts of the several Counties adjoining the river Ohio, within this Commonwealth, have, under an act entitled "An Act to reduce into one the several acts respecting the establishment of ferries," granted ferries across said river to the opposite shore; and whereas the authority of the said County Courts in these cases hath been doubted, and it being reasonable that the said ferries so granted should be confirmed:

SECTION 1. Therefore, be it enacted by the General Assembly, That [43] those ferries which have been granted by the several County Courts aforesaid, pursuant to the requisitions of the aforesaid act, be and the same are hereby confirmed: provided, however, that this act shall not extend so far as to take away the right of any party who has brought or may hereafter bring an appeal, supersedeas, or writ of error, to reverse any order of any such County Court establishing such ferries; and provided, also, that such person or persons to whom such ferries may have been granted shall, in the County Court of the County in which such ferry or ferries are situate, enter into bond, with sufficient security, to be approved of by the said Court to the Governor for the time being, and his successors in office, in the penalty of one thousand dollars, subject to the following condition: the condition of the above obligation is such that whereas a ferry hath been established from the land of the said —— in the County of ——, across the Ohio to the opposite shore; now, if the said —— shall at all times keep good and sufficient boats for the transportation of passengers, carriages, and other personal pro- [44] perty across the said river, and shall at all times, except when the same shall be impassable, give immediate passage to such passengers, carriages, or property across the same, when thereto required, then the above obligation to be void, else to remain in full force. Which bond shall be filed in the Clerk's Office of said Court, and any person injured by a break or breaches of the condition

thereof may prosecute thereon before any Court having competent jurisdiction, and recover in the name of the Governor for the time being, or his successor in office, to his or their use, such damages as he or they may have sustained by such breach.

SEC. 2d. And be it enacted, that when the whole of the penalty of any bond given as aforesaid shall be recovered, unless the obligor or obligors in such bond shall renew the same at the next County Court within and for the County wherein the said ferry may be situate, such obligor or obligors shall forfeit his or their right to such ferry or ferries.

SEC. 3d. And be it further enacted, that the several County [45] Courts aforesaid shall have power and competent jurisdiction to establish ferries across the said river to the opposite shore, where the same may be by them deemed necessary. Provided, however, that no ferry shall hereafter be established on the Ohio river within less than one mile above or one mile below of any other ferry that may have been heretofore or may hereafter be established on said river, except it be in a town, or where it shall be made necessary by the putting into the river of some impassable creek, or opposite to some established ferry in the Ohio State; and the person or persons to whom the same may be established shall enter into bond, with sufficient security, to be approved of as aforesaid, in the like penalty and subject to the same condition as in the first section of this act, is may be acted upon in the same manner; and in the case of failure to renew the same when the penalty thereof shall be recovered, subject to the same forfeiture as in the second section mentioned, is provided.

SEC. 4. And be it further enacted, that the owners or occupiers [46] of ferries which may be established in pursuance of this act shall be entitled to no other exemption from public duties or the payment of officers' fees than by the laws of the Congress of the United States they are or may be entitled.

SEC. 5. Be it further enacted, that the County Courts aforesaid, in all cases where ferries are established under this act, the County shall, at the time when bond shall be entered into pursuant to this act, fix the rate of ferriage, in the same proportion as by the fourth section of an act entitled "An Act to amend and reduce into one the several acts respecting the establishment of ferries."

SEC. 6. And be it also further enacted, that when any ferry-keeper, under this act, shall neglect or obstinately refuse to perform any of the duties required hereby, the said County Courts within whose jurisdiction the same may be, on complaint of any person injured by such neglect or refusal, are hereby authorized to summon such ferry-keeper or ferry-keepers to appear at the next Court to be held for such County, to show cause why such ferry should not be discon- [47] tinued, they may and they are hereby authorized to discontinue the same.

SEC. 7. And be it also further enacted, that if any person or persons shall transport any passenger or passengers, carriages, or other property across said river to the opposite shore, other than those who may be authorized by the said County Courts, or in virtue of this act, for any reward or promise thereof, such person or persons so offending shall be subject to like penalty, and to be recovered in the same manner, as is described in the 8th section of the above recited act.

This act shall be in force from and after the passage thereof.

Approved Dec. 22d, 1806.

OFFICE OF SECRETARY OF STATE,
Frankford, January 18, 1854.

I, James P. Metcalfe, Secretary of State of Kentucky, certify, that the foregoing three and one-third pages contain a true copy of an act entitled "An act to amend an act entitled an act to amend and reduce into one the several acts respecting the establishment of ferries, approved Dec. 22, 1806.

Given under my hand and the seal of my office, the day and date [48] above written, being the 62d year of the Commonwealth.

[L.S.] J. P. METCALFE, Secretary of State.
By GRANT GREEN, Ast. Secretary.

[Order of Campbell County Court of 1807.]
Exhibit E.

STATE OF KENTUCKY, }
Campbell County Court. } Sct.

June Term, A. D. 1807.

Whereas, it appears to the satisfaction of this Court that a ferry was granted to James Taylor, of Virginia, across the Ohio river, in front of the Town of Newport, to the opposite shore, and, also, across Licking river from the said land to the opposite shore, both granted by the County Court of Mason County at the there January Court, 1794, which will appear by reference thereto, Newport at that time being in Mason County; and whereas, under a law of the last session of Assembly, entitled an act concerning of ferries, all those who have heretofore had ferries established across the Ohio are required to apply to their several County Courts, and give bond and security as in said act provided; And whereas, also, it appears to the satisfaction of this Court, that the said James Taylor, of Virginia, hath by deed, duly authenticated, hath conveyed to James [49] Taylor, now of this county, a fee simple estate in the said ferries then established or to be established from the Town of Newport. Whereupon it is ordered, that the same James Taylor, of Campbell County, have a ferry established to him in front of Newport, across the Ohio to the opposite shore, under the law aforesaid, and to be allowed the same rates of ferriages as was allowed to

Thomas Kennedy at the last Court. Whereupon, the said James Taylor, together with Edmond Taylor, his security, entered into and acknowledged their bond in the penalty of one thousand dollars, as the law directs.

STATE OF KENTUCKY, Campbell County, } Sct.

I, James H. Parker, Clerk of the Campbell County Court, do certify, that the foregoing order of the said Court is truly copied from the records of my office. Given under my hand this 3d day of January, A. D. 1854.

JAMES H. PARKER, Clerk.

[Jas. Taylor to Lessee, Rob't Air.]

Exhibit K.

This contract, made this 1st day of October, 1844, between James Taylor, of Campbell County, and State of Kentucky, party of the first part, and Robert Air, of the same County and State, [50] party of the second part, witnesseth: The said Taylor leases to Robert Air his ferry across the Ohio river, from his landing in front of Newport to the Cincinnati side, to commence on the 1st day of April, 1845, and to continue five years from that time. The said Robert Air binds himself to pay said Taylor the sum of one thousand dollars a year rent for said ferry, which rent is reserved and payable in money, and in lawful money of the United States, and to be paid monthly. And should the said party of the second part at any time be more than thirty days in arrears in paying up each month's rent of said ferry, the said Taylor reserves to himself the privilege of re-entering and taking possession of the same, but said party of the second part is not to have the right to give up or abandon said ferry. And the said Taylor shall be at liberty to proceed to recover each month's rent, or any arrears of rent, whenever the said party of the second part shall omit to pay the same for a longer time than thirty days during this lease. The said Robert Air is to keep a good steam ferry-boat for the purpose of conveying passengers, wagons, [51] and carriages during this lease across the Ohio river from the landing in front of Newport to the landing at Cincinnati aforesaid, and he is also to keep a good wharf boat, and other conveniences, such as a shelter on the same to shield persons from the rain, and all other necessary boats and crafts, such as flats and skiffs, for the purpose of conveying passengers, wagons, carts, carriages, and produce across said ferry. The said Robert Air is to keep said Taylor free from all damages, should he or any of his hands neglect to keep said ferry in a correct and attentive manner; and to keep said Taylor free from all fines and damages on account of any injury that may be done either to boats, persons, or property by himself or his hands employed during the continuance of this lease; and should

the County Court of this County require boats to be kept at any other point on the river, above or below the present landing, the said Robert Air to provide such boats as may be required for the purpose of transporting passengers, &c., across said ferry to Cincinnati. The said Robert Air is to cross forward and backward from Cin- [52] cinnati to Newport all of said Taylor's family, his sons, and sons-in-laws' families free of charge, and, also, all persons and agents engaged in said Taylor's employ. Also, all his wagons, carts, carriages, and horses, and produce, and anything he may wish to have taken over or brought back, as also, anything of his sons and sons-in-law, and such of his and their servants as may be sent across said ferry, free of charge. The said Robert Air is to ferry free of charge said Taylor's gardeners, his half of the products of his garden at Sarquit's gap and at the Horner place, on Coverto run. The said Taylor agrees that in case the County Court of Campbell should establish another ferry, and vest the right in any one else beside said Taylor, across the Ohio river from Newport to Cincinnati, that he will deduct or so much of the rent as its value is decreased by the establishing of any such ferry; and in case the said parties cannot agree as to the amount to be deducted, they are each to choose an individual of honorable standing to arbitrate the matter, with power for those two so chosen, in case they differ, to [53] choose an umpire, whose award shall be conclusive and binding on the parties. The said Robert Air binds himself to keep the landing to the ferry in good order and repair; and to save said Taylor free from all fines and presentments relative to the same, said Taylor agrees that said Robert Air shall have the full and free use of said ferry, and possession to be given him of the same on the first day of April next, and the privilege himself or to grant it to any one during this lease. The said Robert Air is bound to fulfill all the stipulations and covenants in this contract and lease. It is expressly understood that this contract and lease is not to be assigned, set over, or transferred in any way, to any one, without the consent of said Taylor, in writing, endorsed on this lease. The party of the second part is to keep a steam ferry-boat at said ferry during the continuance of this lease. As witness our hands, this 1st day of October, 1844.

JAMES TAYLOR, [SEAL.]
ROBERT AIR, [SEAL.]

Witness,
JAS. TAYLOR, JR.

I, Edward J. Hooper, of the County of Campbell, and State of [54] Kentucky, do hereby bind myself, my heirs, executors, and administrators, that the stipulations and covenants in the foregoing lease and agreement, made between James Taylor and Robert Air, shall be complied with on the part of said Air in every particular, hereby guaranteeing that the same shall be, in all its terms, with,

by said Air, and I hold myself as security to said Taylor for the same being complied with by said Air. As witness my hand and seal, this 4th day of October, 1844.

EDW'D JAS. HOOPER, [SEAL.]

Witness,
JAS. TAYLOR, JR.

This lease is extended two years from its termination at same rent, said Air to build and run a new steamboat, now in progress of building, which is to be got out this fall.

July 8, 1846.

JAMES TAYLOR,
By his Agent, JAS. TAYLOR, JR.
ROBERT AIR.

[Jas. Taylor to Lessee, Rob't Air.]

Exhibit M.

Whereas, General James Taylor did, by his last will and testament, enjoin and direct that his executor, named therein, should [55] rent out the ferry then established across the Ohio river from Cincinnati to Newport, as well as other ferries which might hereafter be established on land belonging to his estate; and whereas, said testator did further direct his said executor as to the appropriation of said rent arising from said ferries; and whereas, the lease heretofore entered into between James Taylor, executor of General James Taylor, dec'd, and Robert Air, for the leasing and renting of said ferry, from Newport to Cincinnati across the Ohio river, is about to expire, and the said Air has again determined to lease and rent the same ferry of said Taylor upon terms agreed upon, and satisfactory to each of them, now to carry out this agreement.

This contract and lease, made and entered into this day of April, 1853, between James Taylor, executor of James Taylor, deceased, late of Campbell County, State of Kentucky, of the first part, and Robert Air, of the City of Newport, State of Kentucky, of the second part, witnesseth:

1st. The said party of the first part hereby leases and rents to [56] the party of the second part, the ferry and ferry landings from Newport across the Ohio river, as now established by law, and recently in the occupation of the said party of the second part, under lease from the party of the first part, as executor of General James Taylor, deceased, for the full end and term of six years, fully to be completed and ended, beginning on first day of April, 1853, and ending on the 1st day of April, 1859, which said lease is made on the following terms and conditions, as hereinafter stipulated and set out.

The said party of the second part, in consideration of said lease, and binds himself to pay to the said party of the first part, the sum of three

thousand dollars each and every year during the continuance of this lease, as an annual rent; which sum is reserved as rent, payable in lawful money of the United States, and which is to be paid monthly; that is to say, upon the last day of each and every month, during [57] the continuance of this lease, one-twelfth of said annual rent of three thousand dollars, is to be paid by the party of the second part to the party of the first part.

It is agreed, that should the party of the second part be, at any time during the continuance of this lease, in arrear more than thirty days in paying up each and every month's rent of said ferry as herein stipulated, and after the same has become due, the said James Taylor reserves the right of re-entering into said leased property, and shall be entitled to take possession of said ferry and ferry landings without process of law, without notice or demand upon said party of the second part, and without giving notice that such forfeitures of this lease, and such right of re-entry hereby reserved, will be insisted on; but upon said failure to pay said rent, by the said party of the second part, for more than 30 days after the same has become due, the party of the first part shall have a right to consider this contract void, and shall take possession of said ferry and [58] landings without further notice; but it is expressly understood, that said party of the second part is not to have any right to relinquish or give up this lease, or to abandon said ferry during the term of its continuance, or until the same is fully ended and completed. The said party of the first part shall be at liberty to proceed to recover each month's rent, or any arrears of rent, whenever the said party of the second part shall omit to pay the same for a longer period than thirty days, during the continuance of this lease.

The said party of the second part agrees and binds himself constantly during the continuance of this lease, two good steam ferry-boats for the use of said ferry, which boats are to be kept constantly running from the landings on the Newport shore to the Cincinnati landings, for the accommodation of the entire public and the convenience of passengers, wagons, stock, produce, and everything that is wanted to be transported across said river at said ferry; and the said ferry is so to be conducted, in all respects, during the continu- [59] ance of this lease, that the public shall have no right to complain of a want of facilities in and for crossing said ferry. The said party of the second part agrees and binds himself to run a night ferry, with one steamboat, from Newport to Cincinnati, across the Ohio river, during the continuance of this lease. The said night ferry-boat to be run as late as twelve o'clock each and every night; and if it shall be found that the public interest and convenience requires it, the said party of the second part agrees and binds himself to run said ferry-boat all night. The said party of second part agrees and binds himself to furnish all the necessary steam ferry-boats, skiffs, and other crafts necessary for the keeping up of said

ferry, during the continuance of this lease; and, also, in the event of ice or other impediments to the running of said steam ferry-boats, to furnish sufficient number of skiffs, flats, and other crafts that may become necessary for the transportation of passengers and the public, during the period that said steam ferry-boats cannot be used [60] on said ferry, from ice or any other causes, all of which boats, skiffs, or other crafts thus placed on said ferry, during the continuance of this lease, are to be placed thereon at the cost and expense of the said party of the second part, and are to be the private property of the said party of the second part, and at his own entire disposal.

The said party of the second part further agrees and binds himself to keep, at his own expense, during the continuance of this lease, a sufficient number of wharf-boats at the different landings at said ferry, and cabins to shelter the passengers from the sun and rain, such as are now kept at Covington and Cincinnati, and to keep the same in good order and repair, during the continuance of this lease.

The said party of the second part further agrees and binds himself to devote his personal attention to the management of said ferry, during the continuance of this lease, and binds himself to have, at all times during its continuance, a sufficient number of [61] skillful pilots, engineers, firemen, and other hands to manage and run said steam ferry-boats both in the day and night, and all other crafts, when said steam ferry-boats are not running, so as to accommodate the entire public, and further promptly, efficiently, and faithfully carry out all the regulations, orders, and directions of the Campbell County Court, or the Campbell Circuit Court, to such said ferry or ferry-boats, during the continuance of this lease.

The said pary of the second part agrees and binds himself to cross from Newport to Cincinnati, Mrs. Keturah L. Taylor, widow, and relict of General James Taylor, together with her carriages, carts, horses, vehicles, and servants free of charge, during the continuance of this lease; also, James Taylor and his family; Horatio T. Harris and his family; George T. Williamson and his family, and the family of the late Col. Jno. W. Tibbatts, together with their sons, and sons-in-law, and their respective families, free of charge, during the continuance of this lease. He agrees, also, to cross free of charge, during the continuance of this lease, all agents or servants [62] engaged in the business or employment of any of the persons or their families herein named, as well as all horses, carriages, carts, vehicles, belonging to any of the persons herein named, or their families, which are to be carried over and brought back free of charge, and any and everything which any of said persons or their families may desire to be brought over, shall be carried and brought back across said ferry free of charge, during the continuance of this lease.

The said party of the second part further agrees and binds himself, that he will provide all necessary steam ferry-boats, of the class, kind, and character that may, from time to time, be ordered and directed by the Campbell County Court to be placed upon said ferry during the continuance of this lease, at his own cost; that he will run as many boats during the hours that may be prescribed, from time to time, by said Campbell County Court, during the continuance of this lease, and will, in all respects, comply with all law-
[63] ful and legal orders of said County Court, touching or regulating said ferry, during the continuance of this lease; and he binds himself to keep said party of the first part harmless from all fines and damages on account of any injury or injuries that may be done at said ferry either to persons or property, either by himself or hands, or by his boat or boats, or by any one in his employment at said ferry, during the continuance of this lease, whether the same be done by accident, negligence, or any other cause.

The said party of the second part agrees and binds himself not to transfer, assign, or underlet to any one, during the continuance of this lease, neither the privileges of said contract nor the possession of said ferry and landings, nor the benefit of running said ferry, nor is he to suffer or permit any one to take possession of said ferry or lands, or yield the same to any one during this lease; and he binds himself to surrender the possession of said ferry and landings to said party of the first part at the termination of this lease, unless taken from him before that time by final judgment, decree, or order of
[64] some judicial tribunal.

The said party of the first part agrees and binds himself to defend, at his own proper cost, as executor aforesaid, any and all suits, motions, &c., brought during the continuance of this lease, to or to take away said ferry franchise, or to reduce the rates of ferriage, or to establish another ferry, from Newport to Cincinnati, by any other person except the party of the first part himself; and the said party of the first part is to attend to the defence of all such suit or suits, motions or otherwise, and to pay all costs and attorneys' fees attending said suits; and said party of the first is to have the right and privilege of using the name of said Air in prosecuting or defending any such suit, suits, or motions touching said ferry, and to have him entered defendant, if it be necessary: said party of the second part agrees to notify said party of the first part of the commencement of any legal proceedings against said ferry as soon as process is served upon him, or notice of the pending of any
[65] such proceeding reaches him. It is understood, that the casualties of extreme low or high water preventing a strict compliance with the stipulations of the said boats and keeping said wharf-boats, are to be regarded as an excuse to the party of the 2d part. It is hereby agreed and expressly understood between the parties of the first and second part, in the event of a reduction of the rates of fer-

riage by the Campbell County or Campbell Circuit Court during the continuance of this lease, there is to be no reduction in the annual rent stipulated and agreed to be paid by the party of the second part to the party of the first part, as the rent yearly of this ferry during the continuance of this lease. In witness whereof, the said parties of the first part and second part set their hands and seals the 1st day of April, 1853.

JAMES TAYLOR, Executor of
JAMES TAYLOR, dec'd. [SEAL.]
ROBERT AIR, [SEAL.]

Witness,
J. W. STEVENSON.

[Act of 1852, about Ferries.]

Exhibit N.

County Court to establish ferries at the instance of parties own-
[66] ing the land, the right not to continue beyond twenty years.

Owners of ferries to give bond.

Owners of ferries on the Ohio river liable for the illegal transportation of slaves.

If owners of land will not apply for the establishment of a ferry, it may be granted to another.

[County Courts may establish.]

1st. The several County Courts shall have jurisdiction to establish ferries and grant ferry privileges upon any river or stream in or adjoining their respective counties, and for regulating, working, and controlling the same.

[Writ of Error and Appeal.]

2d. A Writ of Error, or Appeal from any Order, concerning a ferry in favor of any one interest, shall be to the Circuit Court of the County and thence to the Court of Appeals, both of which shall have jurisdiction of law and fact; but the Court of Appeals of only such facts as may be certified from the Circuit Court.

The Appeal to be taken at the time of making the order or during the Term, and the Writ of Error from the Circuit Court to be used within three years from the making of the order in the Circuit Court.

[Limited to 20 years.]

3d. No ferry right, hereafter, shall be granted for a longer period than twenty years.

[At whose instance ferries established.]

4th. A ferry shall be established only at the instance and for
[67] the benefit of the owner of the land where it is located, or, of

course, one who has obtained from the owner the privilege of using the same for that purpose.

5th. No application to establish a ferry shall be heard, unless notice of the application shall have been posted at the Court-house door of the County on the first day of the next preceding Term of this Court.

[Notice of Application.]

6th. If the applicant owns or has right to use the land proposed as the site of the ferry only on side of the stream, and the landing on the opposite side be not at an established public highway, the Court, before granting the ferry right, shall cause a writ of ad quod damnum to issue, to ascertain the damage the owner of the land on the opposite side will sustain, by establishing the necessary right of way over his land, not more than forty feet wide, for the use of such ferry, he having had reasonable notice of the intended application for such writ. If the Court do not approve such assess-
[68] ment, it shall order a new writ to issue; but, if it approve the same, it shall, upon payment into Court for the benefit of the owner of the amount assessed, condemn such right of way for the public use as a highway. If the land over which the right of public way is sought be in another county, the writ of ad quod damnum shall be directed to the Sheriff of that county. Nothing herein shall be construed to authorize the opening, by compulsion, of a road over any land which is prohibited by the chapter on roads.

[When the right may be granted to another than the owner.]

7th. If the owner of the land on either side of the stream over which a public highway passes will obtain a ferry right, or if after having obtained the right he abandons or fails to keep it up according to law, the Court may, after reasonable notice, grant the right to another, and, when necessary to the proper exercise of right by such other, cause to be condemned the fee simple right or the use, for not more than twenty years if the owner so select, not more than two acres of ground adjoining the landing, together with the use, for ferry purposes, of any adjacent uninclosed bank of the
[69] stream; but before the final grant of the right, the damage to the owner of the land shall be first ascertained, under a writ of ad quod damnum, and the amount thereof paid into Court for the use of the owner.

[Applicant to give surety.]

8th. Before a ferry right is granted, the applicant shall with sufficient surety, covenant to the Commonwealth that he will keep the ferry according to law, and pay all damages that any one may sustain by reason of his failure to do so, or by reason of any neglect or misconduct of those managing the ferry, or by reason of the insufficiency of any boat employed thereat. The covenant of the owner

[Transporting slaves.]

of a ferry on the Ohio river shall, in addition, promise to pay the owner of any slave all damage he may sustain by reason of the illegally transporting, or attempting to transport, the slave across the river.

[Amount of surety.]

I. The surety to be taken on the grant of a ferry right on the Ohio river shall be good for at least three thousand dollars, and anywhere else for at least five hundred dollars.

II. Every owner of a ferry who shall have heretofore given bond [70] shall enter in such covenant, with sufficient surety, within six months after this act takes effect; and, upon his failure to do so after summons, his ferry right shall be revoked.

[To be renewed every five years.]

III. Every such covenant shall be renewed once in five years, and oftener if required by the Court; and upon failure to do so, after summons, the ferry right shall be revoked.

[Suits thereon.]

IV. Any person aggrieved may sue, at his own cost and for his own benefit on such covenant, in the name of the Commonwealth.

V. When sale is made of a ferry right or lease thereof, it must be with leave of the Court, and the purchaser or lessee must execute covenant with sufficient surety in lieu of the former covenant. A devisee, or heir of a fee simple freehold estate in a ferry, must also, in like manner, execute within one year after probate or descent a new covenant; and, if under age, it must be executed by his guardian for the infant; if the estate be for a term of years, the personal representative sell the right with the assent of the Court, and the purchaser give such new covenant.

A non-resident owner of a ferry right hereafter granted shall sell [71] the same to a resident citizen of this State within a year after his removal, or the accrual of his right with leave of the Court, and the purchaser give such new covenant.

Upon failure to comply with any requisition of this subjection, the Court shall revoke the grant, the party having been first summoned, or of a non-resident warned by an order posted at the Court-house door, on a Court-day of a previous term, and by publication in some newspaper printed in the County, if any such there be.

9th. At the time of making the grant of a ferry-right, the Court shall prescribe the number and kinds of boats to be kept, and the number of hands employed, and how propelled, whether by steam power or otherwise, and may, from time to time, once in every year thereafter, change the same after notice to the grantee.

Where the rapidity of the current does not require the boat to be propelled by poles, it shall prescribe that a ferry-boat shall have a substantial railing on its side, of at least two feet high.

10th. If the grantee shall not, within six months, put and keep [72] the required boats and hands into use, the Court shall, after notice to him, revoke his grant.

11th. A failure one year to keep up any ferry heretofore or hereafter granted in the manner required, shall be deemed an abandonment of the grant, and after notice to the owner, it shall be revoked.

12th. Any sale or leasing of a ferry-right hereafter made with the owner of a ferry, established within a mile thereof, or any tenant or partner of his, or with any owner, tenant, or partner of a ferry established on the other side of the Ohio or Mississippi, shall be deemed and treated as an abandonment of such right, for which the right shall in like manner be revoked.

13th. The Court shall also, at the time of making the grant, fix the rate of tolls to be charged at the ferry, which shall be in the following proportion:

For every heavy four-wheeled wagon, carriage, or coach, the same as for six horses; for every light or open four-wheeled carriage, or light wagon and driver, the same as for four horses; for [73] every two-wheeled carriage or cart and driver, the same as for two horses; for every hogshead of tobacco, not in a wagon or cart, the same as for one horse; and for every head of meat cattle, the same as for one horse; and for every sheep, goat, hog, or lamb, one-fifth as much as for a horse.

[When changed.]

I. The rates may be changed from time to time, once in every year, but no reduction shall be made, until after notice to the owner.

II. If any ferry-keeper or his servant, or his agent, shall demand, to take from any person a greater sum for ferriage, than is allowed by the Court, he and the owner shall forfeit the ferriage demanded or received to the persons overcharged, and four dollars for every such offence, recoverable before a Justice of the Peace of the County.

14th. Any person who, for reward, shall transport any person or thing across a water, from or to a point within one mile of an established ferry, unless it be the owner of an established ferry on the other side of the Ohio or Mississippi rivers, so transporting to such point on this side, and any owner or lessee or servant of the owner of a ferry on the other side, of either of those rivals, [74] who shall transport from this side without reward, shall forfeit and pay to the owner of the nearest ferry, the sum of sixteen dollars for every such offence, recoverable before a Justice of the Peace.

15th. Any person aggrieved by not being put across immediately at any ferry, without sufficient reasonable excuse therefor, may recover from the owner or keeper, four dollars, before any Justice for every such offence.

16th. No ferry shall be established on the Ohio river, with less than a mile and a half, nor upon any other stream within less than a mile of the place, within a straight line where any existing ferry was pre-established, unless it be in a town or city or where an impassable stream intervenes.

I. No new ferry shall be granted within a city or town, unless those therein cannot properly do all the business, or unless public convenience greatly requires a new ferry at a site not within four hundred yards of that of any other.

II. No ferry-boat shall take in or land any passenger or thing [75] within such distances of another ferry, under the penalty of fifteen dollars for every offence, to be recovered before a Justice, against the owner or keeper, and by the owner of such other ferry.

17th. If a slave be put across the Ohio river in a boat attached to any ferry established therein, the owner and keeper of the ferry shall, in addition to his liability to the owner of the slave, for any damage thereby sustained by him, pay him two hundred dollars, unless the owner or his agent accompany the slave, or has given his written consent thereto; and if the slave be so put across the river with the knowledge or assent of the owner or keeper of the ferry, they shall jointly and severally forfeit and pay the sum of one thousand dollars, to be recovered by any person who will prosecute for the same by suit or indictment.

18th. Any person not a ferry-keeper or owner, who shall put a slave across the Ohio river, contrary to the last section, or did, in so doing, shall incur the liability and penalty therein named for so doing.

19th. The better to secure the penalties herein given against the owner or keeper of a ferry established on the other side of the Ohio [76] river, the Justice issuing the warrant may order any boat belonging to such ferry to be attached, that the levy of the attachment, as a service on the owner, and if the penalty adjudged with the costs be not paid, order the boat to be sold in satisfaction of the same.

20th. An appeal from all penalties imposed under this chapter by a Justice, shall be to the County Court, if prayed within twenty days, and bond with good security be given to satisfy the appellee if the appeal be not successfully prosecuted.

21st. When an appeal or writ of error from an order granting or revoking a ferry-right is pending before the Circuit Court, it shall be the duty of that Court to see that all proper parties interested are brought before the Court.

22d. Every owner of a ferry shall have convenient wharfs, or other dry landings, for the use of his ferry, and always kept in repair, and for a failure for two months to perform this duty in this particular, after monition from the County Court, his right shall be revoked, and besides he shall at all times be liable to any [77] damages for the want of such firm landing.

23d. Ferry-keepers and their accessory hands actually employed in keeping the ferry, shall be exempt from serving on juries, from militia musters, from patrol duty, and from working on the public highways.

24th. So much of the Charter of Louisville, as is consistent with this chapter, is repealed.

An act allowing appeals from orders of County Courts fixing ferry-rates, approved December 15, 1851.

1. That the owner of any ferry in this Commonwealth who shall feel himself aggrieved by the order of any County Court in fixing or changing, or refusing to increase the rates of his ferry, may appeal to the Circuit Court of the County, at the same term of the County Court at which said order is made, or may prosecute a Writ of Error at any time within sixty days.

2. That the County Attorney may take an Appeal in the name of the Commonwealth, to the Circuit Court, or prosecute a Writ of Error within sixty days, from any order fixing, or refusing to diminish the rates of ferriage at any ferry. The Circuit Court [78] shall hear and try the question of fixing or altering the rates as an original case, and shall have power to order the rates of ferriage to be fixed by the County Court.

3. The owner of any ferry, upon serving notice upon the county attorney, and setting up a notice at the Court-house door, one month beforehand, may move the Court to increase the rates of his ferriage, and the County Attorney, upon giving written notice to the owner one month beforehand, may move the Court to diminish the same.

4. No Appeal or Writ of Error shall be prosecuted in the name of the Commonwealth, unless some person becomes responsible to the adverse party for his cost in the same.

Approved January 7, 1852.

Revised Statutes.

I, James P. Metcalfe, Secretary of State for the Commonwealth of Kentucky, do certify that the foregoing act, chapter 39, regulating ferries in the Commonwealth of Kentucky, is a true copy from the Enrolled Bills on file in my office. Given under my hand [79] and the seal of my office, the 19th day of January, 1854, and in the 62d year of the Commonwealth.

[SEAL.] J. P. METCALFE, Secretary of State,
By GRANT GREEN, Ass't Secretary.

[Rob't Air, to bond, Campbell C'y Court.]

Exhibit O.

STATE OF KENTUCKY,
Campbell county, April Court, 1853.

This day Robert Air, lessee of the ferry from Newport to Cincinnati, this day executed bonds, as required by law, with J. M. Caldwell and Thomas L. Jones, his securities, conditioned, &c.

The bond referred to is as follows, viz:

Whereas, Robert Air has become lessee of the ferry across the Ohio river, from the City of Newport to the City of Cincinnati: now we, Robert Air, as principal, and Thomas L. Jones and Jno. M. Caldwell, his securities, do hereby covenant to and with the Commonwealth of Kentucky, that the said Robert Air shall keep said ferry or cause the same to be kept according to law, and pay all damages that any one may sustain by reason of his failure to do so, or by reason of any negligent or misconduct of those managing the ferry, or by reason of the insufficiency of any boat employed [80] thereto, and shall pay to the owner of any slaves all damage he may sustain by reason of the illegally transporting or attempting to transport the slave across said river. Signed this 25th day of April, 1853.

ROBERT AIR. [SEAL.]
THOMAS L. JONES. [SEAL.]
J. M. CALDWELL. [SEAL.]

Attest,
J. H. PARKER, Cl'k.
A copy.

Attest,
JAS. H. PARKER, Cl'k C. C. C.

[Jas. Taylor to Bond. Campbell C'ty Court.]

Exhibit P.

STATE OF KENTUCKY,
Campbell County Court, *set.*
March Term, 1853.

James Taylor, executor of James Taylor, deceased, came into Court, and executed bond to the Commonwealth for the keeping of the ferry across the Ohio river, from Newport to the City of Cincinnati, Ohio, with Thos. L. Jones, his security, conditioned as the law directs.

The bond referred to is as follows, viz:

Whereas, the ferry right across the Ohio river, from the City of Newport, in the State of Kentucky, to the City of Cincinnati, in the State of Ohio, has descended to James Taylor, executor of the [81] last will and testament of James Taylor, dec'd, now we, James Taylor, executor of James Taylor, dec'd, as principal, and Thos.

L. Jones and R. T. Thornton, his security, do hereby covenant to and with the Commonwealth of Kentucky, that the said James Taylor, executor of James Taylor, dec'd, shall keep the said ferry or cause the same to be kept according to law, and as ordered and directed by the Campbell County Court, and pay all damages that any one may sustain, by reason of his failure so to do, or by reason of any negligent or misconduct of those managing the ferry, or by reason of the insufficiency of any boat employed thereat; and shall pay to the owner of any slave all damages he may sustain by reason of the illegally transporting or attempting to transport the slaves across the river. Signed this 28th day of March, 1853.

JAMES TAYLOR,
Executor of James Taylor, dec'd.
THOS. L. JONES,
R. T. THORNTON.

Attest,
JAMES H. PARKER, Cl'k.
A copy.

Attest,
JAMES H. PARKER, Cl'k C. C. C.

[Ordinance of Newport.]

Exhibit S.

Be it ordained by the President and Common Council of the [82] City of Newport, that the Cincinnati and Newport Packet Company be and they are hereby granted the privilege, for the term of five (5) years from the passage of this ordinance, to use and occupy the wharf at the foot of Monmouth street, in this city, for the purpose of landing their packets aforesaid, which are to ply between the City of Newport and the City of Cincinnati, in the State of Ohio; provided, that said Packet Company shall pay to the City of Newport the sum of one dollar per annum during the time aforesaid; and provided further, that such repairs as are now or shall become necessary to be made on said wharf, shall be at the expense of said Packet Company; and provided further, that this City Council of Newport do hereby confer to the said Packet Company the privilege aforesaid, so far as they have the right so to do by law.

Sec. 2d. Be it further ordained, that all ordinances and parts of ordinances, contrary to the provisions of this ordinance, be and the same are hereby repealed.

[83] Clerk's Office, City of Newport.

I, R. H. Hayman, Clerk of the City of Newport, do hereby certify that the above is a true copy of an ordinance passed by the President and Common Council of the City of Newport, at a meet-

ing, held Aug. 18th, 1853, granting to the Cincinnati and Newport Packet Co. the wharf at the foot of Monmouth street, for the use and purposes set forth in the above ordinance. Given under my hand, this January 4th, 1854.

R. H. HAYMAN, City Clerk.

[Affidavit of Jno. Caldwell.]

The affidavit of John Caldwell, taken to be read on the part of plaintiffs in the above cause. The affiant, Jno. M. Caldwell, says [84] that he is now a resident of the City of Newport; that he has resided there for the last twenty years; that he has been a member of the City Council of Newport, for a part of the past two years. He has resided for 20 years on the river bank in Newport, near the landing or the foot of York street, and is and has been for several years past familiar with the business of Newport. He states that he believes the ferry accommodations afforded by Capt. Air, one of the plaintiffs, are entirely sufficient for the public demand; and in the opinion of the affiant the ferry-boats of Capt. Air run oftener, make greater number of trips in a day, than the Kentucky ferry, plying between Covington and Cincinnati, though the general business of the Covington (Kentucky) ferry very greatly exceeds that of the Newport (Air's) ferry.

The affiant has frequently seen the steam ferry-boat "Commodore," and has been on board of her. She is constructed as ferry-boats are; it is built upon the same plan as one of the Covington ferry-boats, except that the Commodore has two engines; the other has but one. The Commodore is larger than Capt. Air's boats, and has a cabin in the rear; while Capt. Air's boats have cabins on the sides. Capt. Air's boats, however, are sufficiently large, and they are as swift as the Commodore; one of them is regarded as the swiftest ferry-boat on the river. Capt. Air's boats are sufficiently large for the trade, and are certainly more easily and safely handled than a boat the size of the Commodore.

The affiant states that the Commodore is not adapted to any [85] business but towing, ferrying, or for a pleasure-boat. It will not answer as a trade boat or passenger boat. It has but one deck, and no berths for passengers. She has no hatches forward, for putting freight into the hold; but, like other ferry-boats, must take freight, if at all, on the open deck. There is very little freight carried by any of the boats, from one side of the river to the other, other than that carried in drays and wagons; sometimes a few barrels or boxes and small packages are taken from one side of the river to the other, for which no bills of lading are given, but it is taken at the ratio of ferriage by law.

The affiant states that he is acquainted with the matter of the lease, by the City Council of Newport, of a portion of the wharf to

Rose & Mays. The lessees were, at the date of the lease, lumber merchants; for some reason or other, not known to affiant, they never took possession (of the wharf,) made no improvement thereon, nor did they ever attempt to exercise any ownership or control over the part leased. The City Council several years since passed an ordinance charging for wharfage. This was very soon thereafter [86] abandoned, and the ordinance was repealed; and there has been no attempt to charge wharfage by the city, until within the past six or eight weeks. Very much of the filing done in front of the town of Newport, was done by private subscription and enterprize. The affiant has understood that Gen'l James Taylor, in his lifetime, and Col. James Taylor, one of the plaintiffs, since his father's death, contributed largely, besides their taxes, to the building and keeping in repair the landings at the foot of the streets in said city. There is no improvement of the wharf in front of the city, except at the foot of the streets before-named, on the river bank, except that commenced by the defendant; since my knowledge of the Town of Newport, say about 35 or 36 years. Gen'l James Taylor and his lessees have landed their ferry-boats, flats, and skiffs, from Cabot that to East Row, covering nearly the entire front of the town, landing at one point or another within this boundary seemed most convenient.

J. M. CALDWELL.

[Affidavit of J. A. Porier.]

Also, the affidavit of J. A. Porier, taken for the same purpose.

The affiant, J. A. Porier, says that he is a resident of the City of [87] Newport, and has resided there about five years. He has been aboard of the boat Commodore. It is constructed as the Covington and Cincinnati ferry-boats are, and runs between Cincinnati and Newport, as a ferry-boat. It has a single deck, no berths for passengers, and seems only fitted for ferry purposes, for towing, and job purposes. It is not built or fitted for trading.

Affiant knows very little of the wharfs in the city, or what has been done for or with them. He states, however, that Col. James Taylor paid to him a note for over one thousand dollars, for work done on the wharf at the foot of York street, and affiant understood at the time (some two years ago) from the contractor, that Col. Taylor paid for the wharf at that point about ($2,700) twenty-seven hundred dollars.

He states, that there is very little if any freight between Cincinnati and Newport, except that carried in drays and wagons, *live* stock, &c., and what freight there is carried under and at the prices [88] fixed by the County Court in the list of ferry rates. No bills of lading are given, either by the Commodore or by Capt. Air's boats. The Captain of the Commodore informed, me that he was charging the same rates charged by Capt. Air.

J. A. PORIER.

[Affidavit of W. J. Berry.]

Also the affidavit of W. J. Berry, taken at the same time for the purpose aforesaid.

The affiant states, that he was born and raised in the Town of Newport, and is familiar with the business of the town. He says, he is satisfied that the accommodations afforded by Capt. Air, in the ferry, are altogether sufficient for the public demand, or public convenience. Capt. Air has two boats well equipped; the trips made by him are as frequent as those at Covington; Covington has a much larger population than Newport.

I have been on board of the steam ferry-boat Commodore; she is built as the Covington ferry-boats are with one deck, no berths, and [89] is built for a ferry or pleasure boat; she is run from shore to shore as Capt. Air runs his boats. There is very little freight taken across from Cincinnati to Newport, other than that taken in wagons and drays. He knows nothing of the charges for the character of business. The affiant states, that, within his recollection, Gen'l Taylor and his lessee have landed the boats at different points on the river bank, as was convenient, though the principal landing has been at the foot of York street, that being near the center of the town. The affiant says, that Col. Taylor has, within the past two years, expended a large sum of money in making a wharf at the foot of York street. The precise amount expended he does not know. He was informed by one contractor that Col. Taylor paid him ($2,700,) twenty-seven hundred dollars; what he paid besides this sum he is unable to say.

W. J. BERRY.

[Affidavit of G. W. Doxon.]

Also the affidavit of G. W. Doxon, taken to be read on the part of the plaintiff in the same cause.

The affiant, George W. Doxon, states, that he moved to the Town of Newport in the fall of the year 1826, and lived there until the fall [90] of 1841, when he removed to Frankfort, where he now lives. Affiant leased and run the ferry from Newport to Cincinnati, from the year 1831 to 1840, and ran the first steam ferry-boat from Newport to Cincinnati; affiant had possession of the entire esplanade or front of the Town of Newport, from the mouth of Licking to the mouth of the small creek above called Taylor Gut, and used first one landing, then another, according to his own convenience. Affiant, during the entire time kept full and exclusive possession of the ferry franchise between Newport and Cincinnati. Affiant held under a lease from Gen'l James Taylor, who owned the ferry landing in front of the entire Town of Newport; when affiant left he sold out his lease and boat to John Doxon, his brother, who continued to run the same

until the first of April, 1845, when he sold out his lease and boat to Robert Air, who has been running the ferry ever since.

Affiant is positive that he held exclusive possession of the ferry [91] franchise during all the time he ran the said ferry, and kept other persons from running a ferry between Newport and Cincinnati.

Affiant states, that while he was engaged in running ferry, persons came to him to get the privilege of quarrying stone in the bed of the river; affiant sent them to Gen'l Taylor, who generally gave them permission to quarry; affiant never knew any person to quarry stone in the bed of the river, except by permission of Gen'l Taylor; affiant knows that Gen'l Taylor paid a considerable amount of money for the construction of the landing on the Newport side at the foot of York street. Gen'l Taylor's subscription was paid by this affiant.

The manufacturing company constructed the upper landing during all the time affiant had exclusive possession of the wharves, and he collected all the wharfage that ever was charged during his lease, and claimed the right to do so under his lease, and no one ever [92] contradicted it. During the time affiant was keeping the ferry at Newport, a man in Cincinnati, who owned the Ohio shore, undertook to ferry passengers from Ohio to the Kentucky side, landing on the esplanade, and took passengers from Kentucky to Ohio; returning, I informed him, took possession of his boat, and would have had the ferry man, but he escaped.

G. W. DOXON.

[Affidavit of Andrew Walker.]

Counter-affidavits read by defendants, viz:

Andrew Walker states he has lived in Campbell county, State of Kentucky, for the last 20 years, or upwards. I am acquainted with the public landing or wharf fronting the City of Newport, on the Ohio river; I know that the City of Newport has always claimed and exercised jurisdiction over the public wharf and landings; I know that she has improved said wharf or landings by grading, paving, and securing the same by piling and protecting the banks; I am acquainted with the ferry said to be run by the Taylor heirs; its landings have always been during my recollection at the foot of [93] York street, except when the water was so low that she could not land there, which very rarely happens.

ANDREW WALKER.

James H. Winston states, that he has lived in the City of Newport, Campbell county, Kentucky, for the the last 25 years; I am acquainted with the public wharves or landings fronting the City of Newport on the Ohio river; I know that the City of Newport, or Town of Newport, has always claimed and exercised jurisdiction

over the public wharves and landings; I know that the city have construoted four wharves or public landings and have commenced others, and have also driven pilings in front of the city, extending from Monmouth to York street, and from Columbia to the stone wall at the U. S. Barracks at the point of Licking river, at a heavy cost, to protect the bank in front of said city. I know that the city authorities, from time to time, have been expending large sums of money for the improvement and protection of the public wharves and landings in said city. I know also that the citizens of Newport and others, during low water, used to quarry stone from the bed of the Ohio river fronting said city, without interruption. I [94] know also that the ferry run under lease from the Taylor heirs, and before said lease—that is, that the ferry run between the city and the Ohio river; has always since my recollection made its landings at the foot of York street, in the city, save and except during the time of very low water, when the boat could not land there, which very rarely happened.

J. H. WINSTON.

[Affidavit of A. F. Miller.]

A. F. Miller states: That he has resided in the City of Newport, County of Campbell and State of Kentucky, ever since the year 1835. I am acquainted with the public wharves or landings in said city, and in front thereof; I know that the city authorities of Newport have caused to be made improvements on said wharves and landings for the public convenience, in the way of grading, paving, and piling, to a large amount of money; I have seen numbers of persons quarrying rock out of the bed of the Ohio river, fronting said city, during low water, without any molestation; the ferry, during my recollection, always landed at the foot of York street, in said city, except when the river was low, that she could not effect a [95] landing, which was very rarely the case; I was Assessor of the City of Newport during the year 1853; in the spring of that year I called upon James Taylor, to take a list of the taxable property, and I asked him particularly about the esplanade fronting the City of Newport, as I desired to know to whom it ought to be assessed; he told me it was a public common for the town or city, and that the city exercised jurisdiction over it, and he refused to list it as his property. In listing property for the State, it is my duty, under the law, to swear persons as to the amount of their property that is taxable. I was also County Assessor during the year 1853, and swore James Taylor as to his list of taxable property, and he did not include the public esplanade fronting the City of Newport, or any part or portion thereof, the question being asked him by me as to the ownership; he neither claimed it as his own nor as the executor of James Taylor, dec'd.

A. F. MILLER.

[Affidavit of J. M. McArthur.]

James M. McArthur: I have resided in the City of Newport, County of Campbell, State of Kentucky, for the last 38 years; I am well acquainted with the public wharves or landings fronting [96] said city, on the river Ohio; I know that the city or town authorities always exercised jurisdiction over the esplanade or public landings in said city fronting on the Ohio river; I know that the city or town authorities contracted for and made the public landings; I contracted with the town for the construction of the Monmouth street wharf, fronting on the Ohio river, in said city, and took the bonds of the town, amounting to $4,900 00, as payment therefor, which bonds were duly paid by the town, that being the wharf at which the steamer Commodore now lands; the ordinary landing of the ferry-boat plying between this city and the Ohio shore is at the foot of York street, except when compelled by low water to land elsewhere, which rarely occurs; I was a member of the Board of Trustees for the Town of Newport for 10 years; I reside in this State and County, near Jamestown.

J. M. McARTHUR.

[Affidavit of Samuel Perry.]

Samuel Perry states: I have resided in the County of Campbell, State of Kentucky, for the last 60 years; I have known the Town, [97] now City of Newport, ever since I can recollect; I am now 63 years old; I have lived in the Town, now City of Newport, ever since 1811; the Town, now City of Newport, exercised jurisdiction over the public landing or esplanade in said city, and fronting the Ohio river; in the year 1814 or 1815 the city built a public market-house on the public landing or esplanade between York and Monmouth streets, which was used and occupied as such for several years, until blown down by a storm; sometime between the years 1819 and 1822, the town built a public wharf at the foot of Monmouth street, where steamer Commodore now lands; McCormick & Morrison were the contractors with the town, and it has been occupied by the town as a public landing ever since, since which time the city has constructed four other wharves, viz: one at Columbia street, one at York street, one at East street, and one at Monmouth street, all of which front and terminate in the Ohio river. I was commander of the steamboat Princeton, and owner also, and loaded, sometime either in 1834 or 1835, said steamboat several times at the wharf at the foot of York [98] street, with bagging, ropes, &c.; it was then, and has been ever since, used and occupied as a public landing; the whole of the esplanade and public landing in said city, fronting the Ohio river, has always been used and occupied as public landing and common, and the authorities of Newport have always claimed and exercised exclusive jurisdiction and control over the said esplanade and public

landings; steamboats, and all other water crafts, rafts, &c., occupy and use the landing fronting on the Ohio river, in said city, when and where they please, and have ever since I recollect; I know that the city has expended a large sum of money for protecting the bank fronting the river, by piling and otherwise.

SAMUEL PERRY.

[Affidavit of F. A. Miller.]

F. A. Miller states: I have resided in City of Newport, Campbell county, Kentucky, ever since the year 1832; am acquainted with the public wharves or landings in said city ever since that time; I know that the city authorities of Newport have always claimed and exercised jurisdiction and control over said wharf in said city fronting the Ohio river; that they have passed ordinances for the col-
[99] lection of wharfage from steamboats and other water crafts, &c., landing at said landings or wharves; that they are at this time in possession of and controlling said wharves and landings, collecting wharfage, &c.; that the city has expended large sums of money in constructing said landings and protecting the bank in front of said river Ohio, by piling and otherwise; the wharf at the foot of Monmouth street is one of said wharves, constructed by said city, and over which she now exercises control; the steamboat Commodore now lands at that wharf; Capt. Air, and all others who run a ferry-boat before him, from this place to Cincinnati, on the Ohio side, always landed their ferry-boats at the foot of York street, except in case of extreme low water, when they usually went up to what is known as the factory wharf, at the foot of East Poor street; I have served a number of years in the Council, or Board of Trustees, of Newport, for 8 or 9 years, and that the right of the city to control and regulate said wharves and landings was never questioned by General James Taylor, in his lifetime.

F. A. MILLER.

[100] R. H. Hayman states: I am the City Clerk of the City of Newport, Kentucky, and keep the records of the proceedings of the President and Common Council; have no interest, either directly or indirectly, in the Cincinnati and Newport Packet Company, nor have they any stock or interest in the steamboat or steam-packet Commodore.

R. H. HAYMAN.

The above counter-affidavits were taken and sworn to on 14th Jan'y, 1854.

The following affidavits were taken by def'ts on 16 and 17 Jan'y, 1854, viz:

J. T. Hayman states: That he has resided in and been acquainted

with the City of Newport, Campbell county, Kentucky, since the year 1815; that, to his certain knowledge, the city authorities of said city have always exercised jurisdiction and control over the esplanade or public buildings and wharves fronting said city, on the Ohio river, ever since that time; that the city authorities of said city have expended large sums of money in the construction of [101] wharves and landings in front of said city, on the Ohio as well as Licking rivers; they have also expended large sums of money in the filling up and protecting the bank in front of the city, on the Ohio, by piling and otherwise, and that the right of said city to exercise control over the public landings and wharves was never questioned by any one, to his knowledge; furthermore, that Gen. James Taylor resided in the city of Newport, when I first knew the city; a number of years previous to his death, he moved just outside the city limits; he died in the year 1848, and that James Taylor, his son, resided in Newport until a short time since his father's decease, when he removed into his father's late residence, where he has resided ever since; that the landings and wharves in said city, fronting on the Ohio river, have always been used as public wharves and landings by anybody and everybody who thought fit to occupy or use them as such, and they are immediately opposite to landings used and occupied as public landings on the Ohio side, in Cincinnati; that the affiant knows that the population of Campbell county and the City of Newport has increased very rapidly within the last few [102] years; that the population of Newport alone, from 1840 to 1850, increased upwards of 5,000 souls, and that since that time the increase has been more rapid still, and that there is now, to the best of my judgment and opinion, between 8 and 9,000 souls in said city; that the commerce between Ohio and Kentucky, at this point, is very great; that the inhabitants of Newport, as well as those of Campbell and parts of the adjoining counties, obtain all, or nearly all, of their groceries, salt, iron, farming utensils, merchandise, goods, and wares from Cincinnati, in Ohio, and that Cincinnati is their main place of trade and commerce, and that their crossing is done at this point; that during the marketing season the amount of crossing from this place to Cincinnati, Ohio, of market and produce wagons, by the gardeners and farmers of this and adjoining counties, is immense; that a large number of the citizens of Newport are engaged in mechanical, commercial, and trading pursuits in Cincinnati, and many in navigating the Ohio river. I know that, in or about the year 1841, the Board of Trustees of Newport passed an [103] ordinance regulating the rates of wharfage chargeable and to be paid by steamboats and other water crafts, &c., using or occupying the public wharves and landings in said city fronting on the Ohio and Licking rivers, and that said ordinance remained in force for a length of time, and, at the request of the citizens of the town in general, the ordinance was repealed; the people believing that it

was against the interest of the town, sought for and obtained its repeal because it had a tendency to drive many steamboat men and others trading, boarding, and having work and repairs done on their boats in the town.

J. T. HAYMAN.

John Simmons states that he resides in the City of Newport, Campbell county, Kentucky, and that he has resided in said city for the last 12 years, with the exception of an absence of eleven months. That the city and county aforesaid depends altogether upon Cincinnati, Ohio, for their groceries, iron, salt, goods, wares, and merchandise, as well as for the sale of their produce, and that this is the only point they make their carriage to and fro. I have spent nearly all the time I have resided here upon the ferry-boats [104] plying between this place and Cincinnati. The amount of live stock, consisting of cattle, horses, hogs, mules, &c., is very considerable, that crosses the Ohio river at this point. There is also a considerable carrying trade, of cooperage, cord-wood, &c., in the winter season, from the interior of the county to Cincinnati. That during the marketing season, the amount of crossing from this place to Cincinnati, Ohio, of market and produce wagons, by the gardeners and farmers of this and the adjoining counties, is immense. I have known and assisted in carrying upwards of 100 market wagons in one day to Cincinnati, and this was frequently the case during the season. There is considerable of a gunpowder carrying trade between this place and Cincinnati, going to the magazine (powder) back of Newport, sometimes to the amount of 500 or 700 kegs a day; a powder wagon is run regularly, generally two or three times a day. There is also a large carrying trade of lumber, back and forth, between this place and Cincinnati. There are two large iron establishments in this place; the one a foundry and iron railing establish- [105] ment, and the other a rolling mill. The carrying trade of both these establishments, especially the rolling mill, between this place and Cincinnati, is very large. There is also a very large cotton factory here; it has been temporarily stopped, the carrying trade of which, between the places aforesaid, is very extensive. To the best of my opinion, Newport contains a population of between 8 and 9,000 inhabitants, and two-thirds of the male inhabitants are engaged in mechanical, commercial, and trading pursuits in Cincinnati, and many in navigating the Ohio river, all of whom have to do their crossings at this point. I know that steamboats and other water crafts, rafts, &c., land and use the public landings and wharfs in Newport, when and where they please. I know that Gen. James Taylor and James Taylor both lived in Newport when I came here, and have lived in and within a short distance of the city ever since. Genl. Taylor resided there up to the time of his death. There is also a large amount of transient travel of citizens of Kentucky,

Ohio, and other States, crossing the Ohio river at this place. There [106] is also a U. S. Barracks at this place; the crossing of the troops, &c., is very extensive. They have a recruiting depot in Cincinnati, and the recruits cross there also. The U. S. mails, also, from the interior, to some extent, cross at this place. I have no interest whatever in the steam packet Commodore, other than that I am employed on her as chief engineer.

J. J. SIMMONS.

[Affidavit of Chas. Breith.]

Charles Breith says that he is a book-keeper in D. Wolff's rolling mill, and that the amount of iron, in value, was two hundred and forty-four thousand dollars, that was transported from D. Wolff's rolling mill in Newport to Cincinnati, Ohio, in the last 12 months, and that the amount of raw material and machinery brought by way of the ferry from Cincinnati to Newport, and to Wolff's rolling mill, amounted in value $82,500 00; all the above iron machinery and raw material passed over the river on the ferry-boats running between Newport and Cincinnati as above stated, in the last year. He also states that the coal and lumber trade is very considerable [107] in Newport, and that the wharfs and landings in front of the City of Newport, on the Ohio river, are used very extensively in that trade; that the wharves and landings in front of Newport are public, and that the city authorities of Newport have, and now do exercise, the right to collect wharfage, and the affiant has paid wharfage to the city authorities of Newport. He further states that there is a public landing and wharf on the opposite side of the Ohio river, in Cincinnati, for steamboats and all kinds of water crafts and the commerce of the river. That a large part of said public landing is opposite to the public landing in Newport. He is further acquainted with the fact, and states the fact to be, that the steamboat Commodore is plying between the port of Newport, in Kentucky, and the port of Cincinnati, in Ohio, as a packet boat, and carrying freight, passengers, and engaged in the commerce between the States of Kentucky and Ohio at this point generally. Affiant further states that the commerce and trade between the two States of Ohio and Kentucky, at the point above-mentioned, is very large.

CHAS. BREITH.

[Affidavit of G. W. Soward.]

[108] Geo. W. Soward states that he has resided in the City of Newport, Kentucky, for nearly 11 years. I am well acquainted with the public landings and wharfs in said city. The city authorities have always exercised jurisdiction and control over said wharves and landings ever since I came here. I have been a member of the City Council of Newport ever since 1849, with the exception

of the year 1852. I know that the city authorities of Newport have expended large sums of money in constructing wharves and landings and protecting the bank in front of the Ohio river, in said city, by piling and otherwise; that they have exercised full control over the esplanade in front of Licking river also. The city has passed ordinances, a number of years ago, regulating the wharfage in front of said city on the Ohio river, and also on the Licking; they have collected wharfage, and their right so to do has never been questioned so far as the affiant knows. The population of Newport, at this time, to the best of my knowledge, is between 8,000 and 9,000; and that the amount of travel from this place to Cincinnati, back and forth across the Ohio river, is twelve times, at least, [109] more than when I came here. The crossing of the Ohio river at this place has become a great public thoroughfare for stock of every description, merchandise, produce, and the traveling community at large of this and other States. I know that the ferry at this place is not sufficient to accommodate the public. Some seven or eight years ago the City Council of Newport leased to Messrs. Mayo & Rose, the public landing in said city, fronting on the Ohio river, between York and Columbia streets, and their right so to do has never been questioned. I know that large sums of money, for years, have been expended by City Council for the construction of wharves and landings at all the public streets running to the Ohio river except two.

GEO. W. SOWARD.

[Affidavit of M. Dadsworth.]

Affidavit of M. Dadsworth.

The affiant, Dadsworth, states that the wharf or river bank on the Ohio side of the Ohio river, opposite the landing and wharves of Newport, Kentucky, are public landings for steamboats and all [110] other water crafts. The steamboat Commodore is plying as a packet-boat between the ports of Cincinnati, Ohio, and Newport, Kentucky, and engaged in transporting freight and passengers between the States of Ohio and Kentucky, at the points abovenamed, as a packet-boat; that her place of landing in Cincinnati, Ohio, is at the public landing on the Ohio side of the Ohio river. Affiant has known the landings in Newport, Kentucky, for about 20 years, and has seen them used frequently as public landings; and states the fact to be, that said boat Commodore is making her landings at one of the public landings in Newport, on the Kentucky side of the Ohio river. He further states that said steamboat Commodore is a licensed steamer under the laws of the Congress of the U. S.; that she has been duly inspected under the laws of the U. S., and is duly equipped under the laws of Congress, and officered under the same, and running as a packet-boat under the laws of Congress.

Affiant further states that the cost of the steamer Commodore is between eleven and twelve thousand dollars, and that she is largely [111] engaged in the carrying trade and the commerce between Ohio and Kentucky, between the points of Cincinnati and Newport; that there is a very large commerce and trade between the States of Ohio and Kentucky, over the river both ways, at the points of Cincinnati and Newport. He further states that the officers engaged on said boats are, all of them, licensed under the laws of Congress as such. Affiant further states the steamer Commodore is a large and very fine boat for the trade in which she is engaged; that the boats (sometimes one, and never more than two,) plying between the points aforesaid, run and owned by James Taylor and Robert Air, or by said Air or Taylor, are much smaller, far less accommodations than the Commodore, and seem to be quite insufficient for the accommodation and wants of the trade and commerce between said points, and are, indeed, very inferior boats.

M. DADSWORTH, JR.

Affidavit of John W. Sebree.

Affidavit of John W. Sebree.

The affiant, Sebree, states that he is a steamboat pilot on the Ohio river, and has a license as such under the laws of the Congress of U. S. That he is now engaged on the steamboat Commodore as one [112] of her pilots; that she is running on the Ohio river as a packet under the laws of the Congress of the United States, and is equipped and officered and manned as such. That she is engaged in plying between the port of Cincinnati, Ohio, and Newport, Kentucky, transporting freights and passengers, and engaged in the commerce and trade of the States of Kentucky and Ohio between the above-named places or points, and largely so engaged. The affiant further states, that he has heretofore been engaged as pilot on the boats run by plaintiffs Air and Taylor over the Ohio river between the ports of Cincinnati, Ohio, and Newport, Kentucky. That the boats run by said Air and Taylor were and are very inferior boats, wholly insufficient to afford the proper accommodations to the freight and passengers, and the trade and commerce between the aforesaid points. That the steamer Commodore is a very fine boat for the trade in which she is engaged, being large and commodious, and [113] having a fine cabin, double engines, &c. Affiant further states that the commerce and trade and transportation over the Ohio river, between the States of Kentucky and Ohio, at the points of Cincinnati and Newport, is not only large, but is immense. That it consists in part of goods, wares, and merchandise in great quantities, also farm and garden productions and live stock, such as hogs, cattle, horses, mules, and the like. There is also an immense crossing of people at the aforesaid points, not only of the citizens of the Cities of Cincinnati and Newport, but by the citizens of Ohio and Kentucky and other States.

That the Newport wharves and landings, on the Ohio river, are public wharves, and have been and still are used as such by all steam and other boats that choose to land and use them; that the steamer Commodore makes her landings at one of these public wharves in Newport. That opposite to the said public landings of Newport there are public wharves and landings in Cincinnati, Ohio, and that said steamer Commodore makes her landings on the Ohio side of the [114] river, at one of these public landings in Cincinnati, Ohio. Affiant further states that he is acquainted with the rise and fall of the Ohio river at Cincinnati aforesaid, and the distance from low water on the Ohio side to a point two-thirds of the way up the bank or wharf, is at least seventy-five yards, and that the river is, the greater part of the year, considerably above low water mark on the Ohio side. Affiant further states, that the steamer Commodore now and always has, since she has been running in the trade aforesaid, made her landings on the Ohio side, and discharged her passengers and freight on that side, beyond the line of low water mark, between low water and ordinary high water mark, on the Ohio side of the river.

JOHN W. SEBREE.

[Attachment Bond.]

Attachment bond, viz:

We undertake that the plaintiffs, James Taylor, executor of James Taylor, deceased, and Robt. Air, shall pay to the defendants, Daniel Wolff, Thos. Dadsworth, Peter Conway, John Sebree, Ernst [115] Klinschmidt, B. Delmar, J. Schenburg, and J. J. Simmons, the damages and costs, not exceeding twenty thousand dollars, which they may sustain by reason of the injunction, and restraining order in this action, if it be finally decided that said injunction and restraining order ought not to have been granted.

January 30th, 1854.

JAMES TAYLOR,
Ex'or of JAMES TAYLOR, dec'd,
ROB'T AIR,
JNO. FINNELL,
THOS. L. JONES,
By BEN. BEALL, Att'y-in-fact.

Power of att'y from Thos. L. Jones to Ben. Beall, to sign his name to the above bond, is on file.

[Order of Injunction.]

Order of Injunction filed with Peter.

It is therefore ordered that the defendants, Peter Conway, Jno. J. Simmons, John Sebree, Ernst Klinschmidt, Bernard Delmar, Joseph Schenburg, Thomas Dadsworth, and Daniel Wolff be and

they are hereby each and all of them enjoined from landing the boat, in the petition and affidavits, called the Commodore, or any [116] other boat or vessel, upon that part of the Kentucky shore of the Ohio river, lying between the lots of the City of Newport, and the Ohio river, being the whole space designated upon the plat of the Town of Newport as the "Esplanade," for the purpose of receiving, or landing, or delivering person or property ferried from or to be ferried to the opposite shore of the Ohio river; and it is hereby declared that the receiving of persons, animals, carriages, wagons, carts, drays, or any other kind of vehicle, either loaded or empty, upon said boat or any other vessel at said "Esplanade" for the purpose of being transported to and landed upon the opposite shore of said river, and the receiving of persons, animals, and the property above described, on said boat or any other vessel, at the opposite shore of the Ohio river, and transporting the same to and landing and delivering them upon said "Esplanade," is ferrying them within the meaning of this order, and is hereby enjoined. This order is to take effect upon the petition to which the same is attached, being filed in the clerk's office of the Campbell Circuit [117] Court, and the plaintiffs causing to be executed by good security, to be approved by the Campbell Circuit Court, a covenant in the sum of twenty thousand dollars, for the payment to the defendants of all such costs and damages as they shall sustain by reason of this injunction and restraining order, if it be finally decided that the same ought not to have been granted, when the petition being filed, and covenant executed and filed with the Clerk, he shall issue the injunction and restraining order hereinbefore granted, which shall be served by delivering to Peter Conway, J. J. Simmons, J. Sebree, Ernst Klinschmidt, Bernard Delmar, Joseph Schenburg, Thomas Dadsworth, Daniel Wolff, or either of them, a copy of said order, or by delivering to the Master of the Commodore, or any other person having charge of said boat, a copy of said order, and upon being so served shall be forthwith obeyed, until otherwise ordered by the Campbell Circuit Court.

Given under my hand, this 28th day of January, 1854.

A. DUVALL.

[Summons and Order Injunction.]

[118] Summons and order of injunction.

The Commonwealth of Kentucky to the Sheriff of Campbell county: You are commanded to summons Peter Conway, J. J. Simmons, John Sebree, Ernst Klinschmidt, Bernard Delmar, Joseph Schenburg, Thomas Dadsworth, Daniel Wolff, and the President and Common Council of the City of Newport, to answer in twenty days after the service of this summons on them, a petition filed against them in the Campbell Circuit Court, by James Taylor, exe'r

of James Taylor, dec'd, and Robert Air, and warn them that upon failing to answer, the petition will be taken for confessed, or they will be proceeded against for contempt, and you will make due return of this summons on the first day of the June Term of said Court. Witness, Benjamin Beall, clerk of said Court, this 30th day of January, 1854.

BEN. BEALL, Cl'k.,
By BEN. D. BEALL, D. C.

[Order of Injunction.]

Bond having been executed herein by the plaintiffs, in conformity to the order of Hon. A. Duvall, Judge of this Circuit, the defendants, [119] Peter Conway, J. J. Simmons, John Sebree, Ernst Klinschmidt, Bernard Delmar, Joseph Schenburg, Thomas Dadsworth, and Daniel Wolff, are each and all of them enjoined from landing the boat called the "Commodore" or any other boat or vessel, upon that part of the Kentucky shore of the Ohio river, lying between the lots of the City of Newport and the Ohio river, being the whole space designated upon the plat of the Town of Newport as the "Esplanade," for the purpose of receiving or delivering, or landing persons or property ferried from or to be ferried to the opposite shore of the Ohio river; and it is declared that the receiving of persons, animals, carriages, wagons, carts, drays, or any other kind of vehicle, either loaded or empty, upon said boat or any other vessel at said "Esplanade," for the purpose of being transported to and landed on the opposite shore of said river, and the receiving of persons, animals, and the property above described on said boat or any other vessel, at the opposite shore of the Ohio river, and transporting the same to and landing [120] or delivering them upon said esplanade, is ferrying them within the intent and meaning of the order, and is hereby enjoined.

30th January, 1854.

BEN. BEALL, Cl'k.
By BEN. D. BEALL, D. C.

[Sheriff's Return.]

Return.

Executed the within on Peter Conway, Jno. Simmons, Daniel Wolff, and Rob't B. McCracken, President of the Common Council of the City of Newport, Ky., by delivering a true copy of the within summons and order of injunction hereto annexed to each. January 31st, 1854.

C. STRICKER, C. C. C.

[Answer of Daniel Wolff and others.]

On the 18th day of February, 1854, the defendants, Daniel Wolff, Ernst Klinschmidt, Bernard Delmar, Thomas Dadsworth, and Joseph

Schoenburg, filed their answer in the Clerk's office, in the following words, &c., viz:

And now the said Daniel Wolff, Ernst Klinschmidt, Bernard Delmar, Thomas Dadsworth, and Joseph Schenburg, defendants named in the above petition, exhibited against said defendants and others, [121] by James Taylor, of James Taylor dec'd, and Robert Air, for answer to said petition or unto so much thereof, as they are advised it is material for them to make answer unto, they answer and say,

First. They have no personal knowledge of the claim of title to the premises described and set forth in the plaintiff's petition, but that they have been informed and believe that it is true that the Commonwealth of Virginia, on the 20th of April, 1787, did grant to the James Taylor of Carolina county, Virginia, the lands described in said petition, and that paper A is a true copy of said grant.

Second. They also admit that said James Taylor took possession of said land, and occupied it by himself and agents, until the fourteenth day of April, in the year seventeen hundred and ninety-one, when he laid out and caused to be laid out a part of said land into a Town of Newport, and made and caused to be made out a plan of said town, dividing the same into in lots, out-lots, streets, public commons, and public squares, and they claim that the said town, so laid [122] out, extending north to the Ohio river, and that all the ground on said plat, laid out for streets and alleys, and all the ground laid out between the northern line of in-lots marked on said plat, and which lots are numbered from one to sixty-two inclusive, and bounded west by a continuation of west lines of lots numbered one, thirty-six, thirty-seven, ninety-six, and ninety-seven, and by a continuation of the east lines of Monmouth street, as known in said town plat, were dedicated for streets, alleys, commons, and public esplanades, and that said Taylor afterwards and between the said 14th day of February, 1791, and the 20th day of August, in the year 1795, sold and deeded many of said lots by number, as marked on said plats, and they claim that lots No. 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 15, and 17, fronting on said Ohio river, were so sold and conveyed, and that the purchasers took possession thereof prior to the said 20th day of August, in the year 1795.

Third. They claim and say, that on the 20th day of August, in the year 1795, the said James Taylor, of Caroline county, Virginia, [123] extended the plat of the said Town of Newport by laying out additional in and out lots east of Monmouth street, and, also, twelve lots on the south side of Short street, and, also, by laying out other portions of said property, in said addition to said town, into streets and alleys, and all the ground between the north side of lots in said addition, from No. 1 to No. 12 and the Ohio river, for a public common; and the said James Taylor did, also, cause a re-survey of said Town of Newport, and a new plat of said Town of Newport, to be made and laid out by one John Roberts, a Surveyor; and the said

James Taylor did cause to be written on said plat the numbers of all the lots in said town, the names of the streets; and in front of lots one to twelve in the addition, and between these and the Ohio river was written common, and between the east side of Monmouth street and Licking river, and between the north line of lots on the original town plat, numbered from one to sixty-two inclusive, was written, "The esplanade to remain a common forever."

And these defendants insist that by these two several plats the [124] whole of the said ground so designated for streets, alleys, common, and esplanade were all dedicated by the said James Taylor for the use and benefit of the people of said Town of Newport; and these respondents claim that, in equity and good conscience, the whole of said ground, in front of said town, now City of Newport, between the Licking river and East Row, and between the north line of the in-lots in said city and the Ohio river, belongs to the City of Newport and the people and lot-holders of said city, and that control and management of the same now belongs to the President and Common Council of Newport.

Fourth. These defendants further state that the plat of said Town of Newport, and the plat of the addition thereto, as aforesaid, were, at the Campbell County Court, before the Judge thereof, in April, in the year seventeen hundred ninety-six, produced to said Court by said James Taylor, or his attorney-in-fact, and duly acknow- [125] ledged by said Taylor, or his attorney, and was by said Court ordered to be recorded; a certified copy of these plats, original and additional, according to the survey of John Roberts, is herewith filed and asked to be made a part of this answer, marked A N, O N. These defendants do not admit that the said Town of Newport, as platted and laid down as aforesaid, did not extend to the Ohio river, and that a long and narrow margin of ground intervened between the northern boundary of said town and the Ohio river, or that such strip was expressly reserved to him, the said James Taylor; on the contrary, these defendants claim that no such reservation was made by James Taylor, of Virginia, and that all of said strip of ground was dedicated to the public for a common and esplanade for the use and benefit of the citizens of said Town of Newport, and to enable them more conveniently to transact business thereon of a commercial and other character, such as is usually transacted by the people of towns and cities on commons, and esplanades, and public landing-places.

These defendants deny that any reservation was made by said [126] James Taylor, when he laid out said Town of Newport and said addition to said town, of any ferry right or privilege whatever; and they deny that the plaintiff, James Taylor, as executor, or representative of James Taylor, deceased, who was the son of said James Taylor, of Caroline, or that Air has any equitable right in said strip of land as ferry owner or otherwise.

Fifth. These defendants claim that the ferry license obtained

from the Campbell County Courts, and all of the licenses heretofore obtained from said Court, under the pretence that said James Taylor in his lifetime, or the said James Taylor as executor of said James Taylor, deceased, since his death, were the fee simple owners of said strip of land between the north line of the in-lots of said town and the Ohio river, were obtained by a misrepresentation made to said Court, and from the belief of the Judges thereof that said Taylor was the owner of the fee simple title to said strip of land, whereas, in truth and in fact, the said James Taylor, testator of James Tay-
[127] lor, the complainant, and the said James as executor, and the said Air's, never had or held in them, or either of them, the fee simple title to said strip of land, or any part thereof; and the grant of said licenses by the County Court of Campbell county to said James Taylor in his life, and to said James Taylor as executor, and said Air, as the same are set forth in complainant's bill, are absolutely void as against these respondents and all other persons.

Sixth. These respondents admit that the Town of Newport was established by law, by act of 14th December, 1795, but they do not admit that, by virtue of that act, any title was vested in said James Taylor, or either of the James Taylors; on the contrary, by the terms of said act the plat of the said town, as surveyed by John Roberts, Surveyor as aforesaid, and the title to the land comprehended in said town was declared by said act to be vested in Thomas Kennedy, Washington Berry, Henry Brashee, Thomas Lindsey, Nathan Kelly, James McClure, and Daniel Duggan, who were
[128] appointed trustees of the title; and, although, by the seventh section of said act, a reservation of the rights of James Taylor is made, yet these respondents claim that said Taylor had already divested himself of all right in said property by the dedication aforesaid; and said 7th section of said act declares, that such part of said town as lies between the lots and the rivers Ohio and Licking, as will appear by a reference to said plat, shall forever remain for the use and benefit of the said town for a common, reserving to the said James Taylor and his heirs and assigns every advantage and privilege which he had not then disposed of, or which he would by law be entitled to; and these defendants claim that, by a fair construction of the said Act of the Legislature of Kentucky, 14th December, 1795, the legal title to said strip of land claimed by said complainants, and of all the land in the limits of the Town of Newport, was vested in the trustees named in said act.

Seventh. These respondents claim the City, formerly Town, of Newport has, ever since the laying out of the said town, claimed the
[129] control of the said strip of ground, being between the north line of the north tier of in-lots in said town and the Ohio river, and has used the same for public streets, public landings, and public commons, or esplanade, without any interruption whatever from any other person or persons; that during a great portion of that period

the said James Taylor, now deceased, was permitted to use a portion of said land as a ferry landing, the same being for a great many years mutually advantageous to the said James Taylor and the citizens and town authorities of the Town of Newport to have a part of said property so occupied; but these respondents deny that, by such occasional occupation, the said James Taylor acquired any rights adverse to the rights of said Town of Newport, or her citizens, or that said James Taylor, in his life, or the complainants, since his death, have ever had any occupation of said premises adverse to the possession of said Town of Newport, or the inhabitants thereof; on [130] the contrary, during all that time the said strip of land has been used by the public for all such common and commercial purposes, and for wharf purposes, as the interests of the public have seemed to require, with the permission and under the control of the town and city authorities of the late Town, now City, of Newport.

Eighth. These respondents have no personal knowledge of the several grants of ferry license to the said James Taylor in his lifetime, nor of the authority of the different courts to issue the same, as stated and set forth in the plaintiff's petition, and, therefore, require proof thereof, if the plaintiffs deem it important to the sustaining of their suit.

Ninth. These respondents have no personal knowledge of the transfer or grant of the title of said premises, or any part of the premises in the bill mentioned by James Taylor, of Virginia, to the late James Taylor, of Kentucky, on the 8th day of June, in the year 1799, or at any other time, and, therefore, require proof thereof; but, on the contrary thereof, they claim that the conveyance refer- [131] red in said bill, marked B, dated 8th June, 1799, does not convey any portion of said strip of land to the said James Taylor; and that said grantor, at the time of said conveyance, had no title to grant to any portion of said land; but that the legal and equitable title to said strip of land had before passed from said Taylor, by virtue of said dedication, as, also, by virtue of the said Act of the Legislature establishing the Town of Newport.

Tenth. These defendants deny the right of the Legislature of Kentucky to pass any law, which has for its object the prevention of any steamboat or other vessel navigating the Ohio river, and between the port of Cincinnati, in the State of Ohio, and the City of Newport, in the State of Kentucky, to receive and carry freight and passengers from any port or place in the State of Ohio to the City of Newport, in the State of Kentucky, and there landing any such freights and passengers.

They claim that the interest of commerce, and the convenience of citizens of the State of Kentucky and Ohio, require the frequent carrying of persons and property, from and to each of those States, [132] across the Ohio river; and that so far as the Acts of the Legislature of the State of Kentucky, referred to by said petitioners,

and made part of their petition, and so far as the same are relied upon to prevent these respondents from running the steamer Commodore between Cincinnati and Newport, and between Newport and Cincinnati, under the license hereinafter referred to, under the laws of the United States. They claim the said laws are opposed to and inconsistent with the laws of the United States, and are therefore unconstitutional and void.

They claim the following entitled Acts, passed by the Legislature of the State of Kentucky, are inconsistent with the several Acts of the Congress of the United States, regulating the enrolment and licensing of ships and vessels, and are void.

1st. The 14th and 16th section of the 39th chapter of the Revised Statute of Kentucky, approved and adopted by the General Assembly of that State in the years 1851 and 1852, being the chapter on ferries.

2d. The, and the better to protect the proprietors of ferries across the Ohio river. Approved February the 29th, 1856.

[133] Tenth. And, for further answer, these defendants state that within the last few years, the commerce and travel between Cincinnati, in the State of Ohio, and Newport, in the State of Kentucky, have very much increased, and is still increasing; that many hundreds of persons engaged in manufactures and in commerce, who transact the principal part of their business in Ohio, reside in Newport, in the State of Kentucky; others reside in Cincinnati who are largely interested in manufacturing and other business done in Newport, in the State of Kentucky; that by reason of this increase of population, and the increase in the commercial business carried on between the two States, it had become very desirable, in order to facilitate the commerce between the two States, and in order to convey passengers from the one State to the other, on a cheaper and better mode than had heretofore been done, these respondents, with a view to, and in part to accommodate the interests of defendant, Wolff, who owns a very large iron-rolling mill in Newport, in the State of Kentucky, where he resides, at which he manufactures about three thousand tons of wrought iron per year, nearly all of [134] which he has to have carried from Newport to Cincinnati for sales, and in part to accommodate the citizens of Newport in Cincinnati, Ohio, and Kentucky; these defendants agreed to form a Packet Company, for the purpose of running a steam Packet *Company* from Cincinnati to Newport, and from Newport to Cincinnati as aforesaid; and to encourage these defendants in their enterprise, and offered them suitable landing on the Kentucky side of the Ohio river, at a public wharf or esplanade in said City of Newport, an ordinance was passed, on the eighteenth day of August, in the year 1853, a copy of which is hereto attached, marked Y, and made a part of this answer, by which the President and Common Council of the City of Newport granted to defend-

ants, the Cincinnati and Newport Packet Company, the privilege, for the term from five years from the passage of the said ordinance, to use and occupy the wharf at the foot of Monmouth street, in the said City of Newport, for the purpose of landing their packets, which should ply or run between the said City of Newport and [135] the said City of Cincinnati, in the State of Ohio; for which privilege these defendants were to pay one dollar per year, improve and widen the wharf, and do all such repairs to said wharf as might become necessary at their own expense; which they aver, that by virtue of the twenty-second section of the Act passed by the Legislature of Kentucky, approved 24th February, 1834, entitled "An Act amendatory of the several Acts relating to the Town of Newport, in Campbell County, as well as other laws of Kentucky," and the dedication of said ground, the said President and Common Council of the City of Newport had full authority to grant.

Eleventh. These defendants claim and assert the fact to be, that they built the steamboat Commodore in the Town of Fulton, in the County of Hamilton, in the State of Ohio, in the year 1853, and are now the owners thereof; that they furnished the said steamboat with engines, boilers, furniture, and other appurtenances, as required by the laws of the United States of America; and on the 4th day of January, in the year 1854, caused the said vessel, called [136] the Commodore, to be enrolled in conformity to an Act of Congress of the United States of America, entitled "An Act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same; and in which enrollment, and the affidavit made and recited therein, it is shown that said boat was owned in shares, as follows, "viz:" By Ernst F. Klinschmidt, of Cincinnati, twenty shares; Joseph Schenburg, of the same place, five shares; Bernard Delmar, of Cincinnati, ten shares; Thomas Dadsworth, of the same place, twenty shares; and that Daniel Wolff, of Newport, owns the remaining forty-five shares; all of whom are citizens of the United States, and sole owners of the said vessel, called the Commodore of Cincinnati. It was also set forth, that Peter Conway was master of said vessel, and that he had made oath that he was a citizen of the United States; that said vessel was built at Fulton, in the State of Ohio, in the year 1853, and was new, and the usual certificate of the [137] inspectors of hull, boilers, machinery, &c., had been filed. And it was further stated and set forth in said certificate of enrolment, that S. B. McLean, Surveyor of the Port of Cincinnati, having certified that the said vessel has one deck and no mast, that her length is one hundred and seven feet, her breadth thirty-two feet, her depth four feet five inches, and that she measures one hundred and twenty-eight $\frac{87}{95}$ tons, and full built; that she is a steamer, has square stern, no gallery, and no figure-head; and the said Peter Conway, having agreed to the above description and

measurement, and that sufficient security had been given according to said act, the said steamer Commodore was, by the said S. B. W. McLean, declared duly enrolled at the Port of Cincinnati, and a certificate of said enrollment signed by the said S. B. W. McLean, Surveyor of Customs, with the seal of the office attached thereto, was duly issued, by said S. B. W. McLean, Surveyor as aforesaid, to these respondents, bearing date the fourth day of January, in the year eighteen hundred and fifty-four.

And the said vessel being so enrolled, as aforesaid, these defendants afterwards, on the fourth day of January, 1854, obtained from the said S. B. W. McLean, Surveyor of Customs at the Port of [138] Cincinnati, a license signed by said McLean, Surveyor of Customs, and under his seal of office, at the Port of Cincinnati, whereby, in pursuance of an Act of Congress of the United States of America, entitled "An act for the enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," and whereby license was given and granted for the said steamer Commodore to be employed in carrying on the coasting trade for one year from the date thereof, and no longer; and the master of said steamer Commodore then and there gave bond that said steamer Commodore should not be employed in any trade while said license should continue in force, whereby the revenue of the United States would be defrauded; and having also sworn that said license should not be used for any other vessel, or any other employment specified in said license, the said license, so signed and sealed, was by S. B. W. McLean duly delivered to said Peter Conway, master of said steamer Commodore, for the owners; all which will more fully appear by reference to said enrollment and certificate, copies of which, and of the inspection, are hereto attached and made part of this answer, marked Exhibits Q A, Q B, Q Y.

[139] Twelfth. These defendants claim that, by virtue of the license so obtained as aforesaid, and which the said S. B. W. McLean, as Surveyor of Customs at the Port of Cincinnati aforesaid, was authorized to grant and issue, these defendants were fully authorized to navigate the boat on any of the navigable waters of the United States in the coasting trade, and to carry freights and passengers from one State into another State; and more particularly do they claim and insist that, by virtue of the license aforesaid and the laws of the United States, they are authorized to run the said steamer Commodore from the Port of Cincinnati, which is situate on the north side of the Ohio river, in Hamilton County in the State of Ohio, to the City of Newport, situate in Campbell County in the State of Kentucky, across the Ohio river, which is a navigable river, running between the States of Ohio and Kentucky, and forming as it does, the boundary line to each of those States. They claim, also, that under said license and under the laws of the United States,

they are duly authorized to convey passengers and freight on said steamer Commodore, for hire or gratis, from the City of Cincinnati, in the State of Ohio, to the City of Newport, in the State of Ken-
[140] tucky, and from the City of Newport, aforesaid, to the City of Cincinnati, aforesaid.

Thirteenth. They do not claim the right to run their said steamboat Commodore, nor are they running said steamboat as a licensed ferry-boat; nor do they claim any right under the ferry laws of the State of Kentucky; but they do claim the right as a Packet Company, and under the license aforesaid, to run and navigate said boat across the Ohio river from Cincinnati to Newport, and from Newport to Cincinnati; and at each of these ports and places to discharge and receive such passengers and freight as they may be able to contract for, to be conveyed and carried from and between each of those places, and at such rates and upon such terms as may be agreed upon between the parties interested. They claim that they, and any and all citizens of the United States, have the right to navigate the said Ohio river, between the places aforesaid, in such boat, or ship, or vessel duly licensed for that purpose by the proper officers under the laws of the United States, as may best suit their
[141] convenience, for the purpose of carrying on trade between the different States; and that all State laws, passed by the Legislature of Kentucky, limiting or controlling this right, are unconstitutional and void. They claim, under the authority and license and ordinance, above set forth a right to run their said steamer as a packet, as above, across the Ohio river, between the States of Ohio and Kentucky, for the purpose aforesaid; and that the Courts of Kentucky, and this Honorable Court, has no jurisdiction or power to enjoin or restrain from so doing.

Fourteenth. They admit, while they are running the said steamboat Commodore, which they admit they did run between the above ports from the 5th day of January, 1854, to the day of , they received, for the conveyance and transportation of passengers and freight, &c., from Cincinnati to Newport, and from Newport to Cincinnati, the sum of seven hundred and sixty-nine dollars; and that they paid out, for expenses in running said packet boat, the sum of . The reason why so small a sum was received was, because it was run at a season of the year when comparatively little business was doing across the river between said ports.

[142] Fifteenth. They deny that said complainants have any right, by virtue of their pretended ferry rights and ferry licenses derived from the Courts of the State of Kentucky, to navigate their said steamboat, or the steamboat of any one of them, from the State of Kentucky to the State of Ohio. These defendants deny that the Courts of Kentucky have any right or authority, under pretence of running a ferry-boat, to license any one or more persons to run a steamboat or other vessel from the State of Kentucky to the State

of Ohio, across the Ohio river. On the contrary thereof, they claim the power to license all such steamboats and other vessels designed for navigating on the Ohio river, between the States of Ohio and Kentucky, is vested by the Constitution of the United States in the Congress of the United States, and so the complainants understand; for these defendants aver that said complainant, Robt. Air, is not now, and has not been, running said steamboats on the Ohio river, from Newport to Cincinnati, and from Cincinnati to Newport, under the license obtained for keeping a ferry; but, on the contrary, he [143] applied for and obtained from the Surveyor of Customs at the Port of Cincinnati, licenses to run his said boat in the coasting trade, under the laws of the United States; that one of said licenses was obtained on the 13th day of Sept., 1853, by which the steamer "Belle of Cincinnati" was licensed to run in the coasting trade for one year from the said 13th day of Sept., 1853, copies of which licenses are hereto attached, marked N, O, and made part of this answer; and these respondents claim that, without these licenses, obtained under the laws of the United States, the said complainant would not be authorized to run or navigate said steamboat, from one State to another, on the Ohio river.

Sixteenth. These defendants further claim, by way of cross-claim, that by reason of the injunction granted in this case, preventing these defendants from using their said steamboat Commodore in navigating the Ohio river, as authorized by said license so granted for the [144] running of said boat, they have been and will be greatly damaged and injured, and prevented from making great gains, which they otherwise would have made; and they claim that such damages will amount to at least fifty dollars per day; and they claim, on a final hearing of this cause, a decree for the amount of damages which they may sustain by order of the said injunction, at the above rate, during the continuance of said injunction. They deny the right of the plaintiffs, or any other person, to enjoin or prevent these defendants from navigating the Ohio river, between the Ports of Cincinnati, in the State of Ohio, and of Newport, in the State of Kentucky, under or by authority or reason of any State law, or pretended State laws, restricting the navigation of said river. They claim that their license and authority from the United States gives them full power, authority, and right to navigate said river, and engage in the commerce and trade between the said two ports of different States.

They charge that there are public wharves and landing places in [145] both of said ports, established for the convenience of the trade and commerce of said river, which a great navigable stream and highway, as well for the commerce passing across said stream, from one State into another, as along the same, and that the said steamer Commodore makes her landings at said public wharves. Wherefore

they pray that said injunction may be dissolved, that they may be decreed their said damages, and for all proper relief.

FOX & FRENCH,
H. STANSBURY,
ROOT & WEBSTER,
Att'ys for def'ts.

[Ordinance of Newport, passed in 1853.]

Ordinance of Newport, passed 18th Aug., '53, marked Exhibit Y.

Be it ordained by the President and Common Council of the City of Newport, that the Cincinnati Packet Company be and they are hereby granted the privilege, for the term of five years, from the passage of this ordinance, to use and occupy the wharf at the foot of Monmouth street, in this city, for the purpose of landing their packets aforesaid, which are to ply between the city of Newport and the city of Cincinnati, in the State of Ohio; provided, that said Steam Packet Company shall pay to the City of Newport the sum of one dollar per annum, during the time aforesaid; and pro-
[146] vided further, that such repairs as are now or shall become necessary to be made on said wharf, shall be at the expense of said Packet Company; and provided further, that this City Council of Newport do hereby confer to the said Packet Company, the privilege aforesaid, so far as they have the right so to do by law.

SECT. 2. Be it further ordained, that all ordinances and parts of ordinances, contrary to the provisions of this ordinance, be and the same are hereby repealed.

Clerk's Office, City of Newport, Ky.

I, R. H. Hayman, Clerk of the City of Newport, do hereby certify that the above is a true copy of an ordinance, passed by the President and Common of the City of Newport, held August 18th, 1853, and on record in my office.

R. H. HAYMAN, City Clerk.

[Inspection of Commodore.]

Inspection of Commodore, Exhibit O A.

By authority of the United States of America, No. 95, Steamer Commodore, Inspector's Certificate.

STATE OF OHIO,
District of Cincinnati, *ss.*

Application having been made, in writing, to the subscribers, [147] Inspectors for said District, to inspect the steamer Commodore, of Cincinnati, in the State of Ohio, whereof Ernst T. Klinschmidt, Bernard Delmar, Joseph Schenburg, Daniel Wolff,

and Thomas Dadsworth are owners, and Peter Conway is master, we having performed that service, now, on the 4th day of January, A. D. 1854, do certify that she was built at Fulton, in the State of Ohio, in the year 1853, is of $128\frac{87}{100}$ tons burthen, and is in all respects staunch, seaworthy, and in good condition for navigation, having suitable means for escape from the main to the upper deck, in case of accident; that she is provided with no state rooms, with no berths to each; has no permanent cabins, and no extra or moveable cabin berths, and has suitable accommodations for 300 passengers. That she is a steamer sailing to and from inland ports, a distance of five hundred miles, or upward, and is permitted to carry 300 passengers, except when making voyages from New Orleans to St. Louis, when the following rules shall be observed, to wit:

A berth, bunk, or hammock shall have space of at least six feet long, 22 inches wide, and 2 feet high, clear of obstruction, and easy of access for each passenger. Children one year old, or less, shall not be included in the calculation. Two children, whose [148] united ages shall not exceed sixteen years, shall be counted as one passenger. When there are four or more tiers of berths in height, 10 square feet of deck-room shall be allowed for each passenger. When there are three tiers of berths in height, 12 square feet for each passenger. When there are two tiers of berths in height, 14 square feet for each passenger. When there shall be but one tier of berths in height, or when there are no berths, 15 square feet shall be allowed for each passenger. These spaces shall be calculated only in suitably enclosed deck-room, which shall be properly warmed in cold weather, and properly ventilated at all times. That she is provided with two high-pressure boilers, 26 feet long and 40 inches in diameter, of cylindrical form, with 2-$14\frac{1}{4}$ inch return flue in each, constructed of iron, of $\frac{1}{4}\frac{3}{2}$ths of an inch in thickness, and made in the year 1853; that they are, in all respects, conformable to law. That each boiler has been subjected to a hydrostatic pressure of 200 pounds to the square inch; that the maximum working power allowed was determined by the rule prescribed by the Act of August 30th, 1852. That there [149] are 1 safety valve, 12^{56} square inches area; that the load prescribed to each is such as to allow but 125 pounds pressure per square inch; one left in charge of the engineer, and none withdrawn from interference of the officers of the boat. Has two supply pipes of $2\frac{1}{2}$ inches each in diameter, and has sufficient means to keep the water at all times, and under all circumstances, up to four inches over the flue. Has 2 steampipes of 4 inches in diameter, each. And 2 high pressure engines, with cylinders 17 inches in diameter, each, and five feet stroke. Has two forcing pumps of $2\frac{3}{4}$ inches plunge, and 15 inches stroke, each, worked by

a doctor engine. Has one water gauge and 1 steam guage, all properly secured. Has the alloyed metal, with Evan's application, which fuses at 130 pounds pressure. Has one fire forcing pump of 6 inches stroke each, and five inches in diameter of plunge. Has 50 feet of hose, 20 buckets, and 5 axes. Has one life-boat in good order, and four floats. Has life preservers, and 4 floats containing 72 superficial feet. Has additional steering apparatus; a wire tiller rope. We further certify, that the equipments of the vessel throughout, including pipes, pumps, and other means to keep the water up to the point afore-
[150] said; hose, boats, life-preservers, spark-arresters, blocks, rigging, anchors, and other things, are in conformity with the provisions of the law; and that we declare it to be our deliberate conviction, founded upon the inspection we have made, that the vessel may be employed as a steamer upon the waters herein specified, without peril to life, from imperfection of form, materials, workmanship, or arrangement of the several parts, or from age or use: And we further certify, that the said vessel is to run within the following limits, to wit: From the Port of Cincinnati, on the Ohio river, to the Ports of Richmond and Aurora, on the Ohio river, touching at the intermediate places and back; and also to other ports, and on rivers usually navigated by boats of the same class.

STATE OF OHIO,
District of Cincinnati, *ss.*

Personally appeared before me, the undersigned, Surveyor of Customs, in and for said District, Thomas J. Haldeman and W. W. Guthrie, duly appointed Inspectors of hulls and steam boilers for the District of Cincinnati, and made solemn oath that the annexed certificate of inspection is just and true.

Sworn and subscribed before me, this 4th day January, A. D.
[151] 1854.

THOS. J. HALDEMAN, [SEAL.]
W. W. GUTHRIE, [SEAL.]

S. B. W. McLEAN, [SEAL.]
Surveyor.

I hereby certify that the above is a true copy of the original, on file, in my office.

S. B. W. McLEAN, Surveyor.

Port of Cincinnati, 4th day of January, 1854.

District and Port of Cincinnati, to wit:

I, S. B. W. McLean, Surveyor and Inspector of the Revenue in and for the Port of Cincinnati aforesaid, do hereby certify that the within certificate of inspection is a true copy of the original,

on file, in this office. In testimony whereof, I do hereby sign my name, and affix the seal of said office, the 17th day of February, in the year of our Lord, 1854.

[SEAL.] S. B. W. McLEAN,
Surveyor of Customs.

[License of Commodore.]

License of Commodore, Exhibit Q B.

License of a vessel above twenty tons to carry on the coasting trade for one year.

District of the Port of Cincinnati:

In pursuance of an act of Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," Peter Conway, of Newport, State of Kentucky, [152] having given bond that the steamer called the Commodore, whereof the said Peter Conway is master, burthen one hundred and twenty-eight $\frac{87}{95}$ tons, (128 $\frac{87}{95}$ tons,) as appears by her certificate of enrollment, issued and dated at Cincinnati, on the 4th day of January, 1854, and No. 1, shall not be employed in any trade while this license shall continue in force, whereby the revenue of the United States shall be defrauded; and having also sworn that this license shall not be used for any other vessel, or for any other employment than is herein specified; license is hereby granted for the said steamer Commodore, to be employed in carrying on the coasting trade for one year from the date hereof, and no longer.

Given under my hand and seal of office, at the port of Cincinnati, this 4th day of January, in the year one thousand eight hundred and fifty-four.

[SEAL.] S. B. W. McLEAN,
Surveyor of Customs.

District of the Port of Cincinnati, to wit:

I, S. B. W. McLean, Surveyor and Inspector of the Revenue in and for the Port of Cincinnati aforesaid, do hereby certify, that the within license is truly copied from the original record of license, on file, in my office.

In testimony whereof, I do hereby sign my name, and affix the [153] seal of said office, this 17th day of February, in the year of our Lord, 1854.

S. B. W. McLEAN,
Surveyor of Customs,
By R. T. REILEY, Deputy.

[Enrollment of Commodore.]

Enrollment of Commodore. Exhibit Q Y.

"Enrollment."

Enrollment in conformity to an act of the Congress of the United States of America, entitled an "Act for enrolling and licensing ships and vessels, to be employed in the coasting trade and fisheries, and for regulating the same." Daniel Wolff, of Kentucky, have taken or subscribed the oath required by the said act, and having sworn that Ernst T. Klinschmidt, of Cincinnati, owns twenty shares; Bernard Delmar, of the same place, owns ten shares; Joseph Schenburg, of the same place, owns five shares; Thomas Dadsworth, of the same place, owns twenty shares; and Daniel Wolff, of Newport, Kentucky, owns the remaining forty-five shares of the steamer hereinafter named, and that they are all citizens of the United States, and sole owners of the ship or vessel called the Commodore, of Cincinnati, whereof Peter Conway is, at present, master; and as he hath sworn, is a citizen of the United States, and that the said ship or vessel was built at Fulton, in the [154] State of Ohio, in the year 1853, and is now new—the usual certificate of the inspectors of hulls, boilers, machinery, &c., being filed. And the undersigned surveyor of the Port of Cincinnati having certified that the said ship or vessel has one deck and no mast, and that her length is one hundred and seven feet, her breadth thirty-two feet, her depth four feet five inches, and that she measures one hundred and twenty-eight $\frac{87}{95}$ tons, (128 $\frac{87}{95}$ tons,) and full built; that she is a steamer, has square stern, no gallery, and no figure-head.

And the said Peter Conway having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said steamer Commodore has been duly enrolled at the Port of Cincinnati.

Given under my hand and seal, at the Port of Cincinnati, this fourth day of January, in the year one thousand eight hundred and fifty-four.

[SEAL.] S. B. W. McLEAN,
Surveyor of Customs.

District and Port of Cincinnati, to wit:

I, S. B. W. McLean, Surveyor and Inspector of the Revenue in and for the Port of Cincinnati aforesaid, do hereby certify, that the within enrollment is truly copied from the original records of [155] enrollment, on file, in this office. In testimony whereof, I do hereby sign my name, and affix the seal of the said office, this 17th day of February, in the year of our Lord 1854.

S. B. W. McLEAN,
Surveyor of Customs.

[Enrollment of "Bee."]

Enrollment of "Bee." Exhibit "N."

Enrollment.

Enrollment in conformity to an Act of the Congress of the United States of America, entitled "An Act for Enrolling and Licensing Ships and Vessels to be employed in the Coasting Trade and Fisheries, and for regulating the same."

Robert Air, of Newport, Kentucky, having taken or subscribed the oath required by the said act, and having sworn that he owns one-half and that James Walls, of the same place, owns the other half of the steamer hereinafter named, and that they are citizens of the United States, and sole owners of the ship or vessel called the Bee of Newport, whereof he, the said Robert Air, is at present master and, as he hath sworn, is a citizen of the United States; and that the said ship or vessel was built at Cincinnati, Ohio, in the year 1851, as appears by her enrollment, (No. 60,) issued and dated at Cincinnati aforesaid, on the 1st day of July, 1852, and now sur-
[156] rendered for renewal. And the said enrollment having certified that the said ship or vessel has one deck and no mast, and that her length is eighty-three feet, her breadth thirty-three feet, her depth four feet, and that she measures eighty-eight $\frac{88}{95}$ tons, (88 $\frac{88}{95}$ *tons*,) and is square-built, is a steamer, has square stern without tuck, no gallery, no figure-head. And the said Robert Air having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said steamer Bee has been duly enrolled at the Port of Cincinnati.

Given under my hand and seal at the Port of Cincinnati, this thirteenth day of September, in the year one thousand eight hundred and fifty-three.

S. B. W. McLEAN,
Surveyor of Customs.

[SEAL.]

District and Port of Cincinnati, to wit:

I, S. B. W. McLean, Surveyor and Inspector of the Revenue in and for the Port of Cincinnati aforesaid, do certify that the within enrollment is truly copied from the original record of enrollment in this office.

In testimony whereof, I do hereto sign my name and affix the seal of said office, this 18th day of February, 1854.

S. B. W. McCLEAN,
Sur. of Customs.

[SEAL.]

By H. OPPENHEIMER,
Deputy.

[License of Bee.]

License of Bee. Exhibit O.

License of a vessel above twenty tons, to carry on the coasting [157] trade for one year.

District of the Port of Cincinnati:

In pursuance of an Act of Congress of the United States of America, entitled "An Act for Enrolling and Licensing Ships or Vessels to be employed in the Coasting Trade and Fisheries, and for regulating the same,"

Robert Air, of Newport, Kentucky, having given bond that the steamer called the Bee, whereof the said Robert Air is master, burthen 88 $\frac{88}{95}$ tons, as appears by her certificate of enrollment, issued and dated at Cincinnati, Ohio, on the 13th day of September, 1853, and No. 81, shall not be employed in any trade, while this license shall continue in force, whereby the revenue of the United States shall be defrauded; and having also sworn that this license shall not be used for any other vessel, or for any other employment than is herein specified, license is hereby granted for the said steamer Bee to be employed in carrying on the coasting trade for one year from the date hereof, and no longer.

Given under my hand and seal of office at the Port of Cincinnati, this 13th day of September, in the year one thousand eight hundred and fifty-three.

[158] S. B. W. McLEAN,
[SEAL.] Surveyor of Customs.

District and Port of Cincinnati, to wit:

I, S. B. W. McLean, Surveyor and Inspector of the Revenue in and for the Port of Cincinnati aforesaid, do hereby certify that the within license is truly copied for the original Record of Licenses on file in this office.

In testimony whereof, I do hereto sign my name and affix my seal of said office, this 18th day of February, 1854.

S. B. W. McLEAN,
Surveyor and Inspector,
By H. OPPENHEIMER,
Deputy.

[License of Belle of Cincinnati.]

License of Belle of Cincinnati. Exhibit U.

License of a vessel above twenty tons, to carry on the coasting trade for one year.

District of the Port of Cincinnati:

In pursuance of an Act of the Congress of the United States of America, entitled "An Act for Enrolling and Licensing Ships or

Vessels to be employed in the Coasting Trade and Fisheries, and for regulating the same."

Robert Air, of Newport, Kentucky, having given bond, that the steamer called the Belle of Cincinnati, whereof the said Robert Air is master, burthen 110 $\frac{5}{95}$ tons, as appears by her certificate of enroll-
[159] ment, issued and dated at Cincinnati, Ohio, on the 13th day of September, 1853, and No. 82, shall not be employed in any trade while this license shall continue in force, whereby the revenue of the United States shall be defrauded; and having also sworn that this license shall not be used for any other vessel, or for any other employment than is herein specified, license is hereby granted for the said steamer Belle, of Cincinnati, to be employed in carrying on the coasting trade for one year from the date hereof, and no longer.

Given under my hand and seal of office at the Port of Cincinnati, this 13th day of September, in the year one thousand eight hundred and fifty-three.

S. B. W. McLEAN,
Surveyor of Customs.

District and Port of Cincinnati, to wit:

I, S. B. W. McLean, Surveyor and Inspector of the Revenue in and for the Port of Cincinnati aforesaid, do hereby certify that the within license is truly copied from the original Record of Licenses on file in this office.

In testimony whereof, I do hereto sign my name and affix the seal of said office, this 18th day of February, 1854.

S. B. W. McLEAN,
Surveyor of Customs,
By H. OPPENHEIMER,
Deputy.

[Enrollment of Belle of Cincinnati.]

[160] Enrollment of Belle of Cincinnati. Exhibit O.

Enrollment in conformity to an Act of the Congress of the United States of America, entitled "An Act for Enrolling and Licensing Ships and Vessels to be employed in the Coasting Trade and Fisheries, and for regulating the same."

Robert Air, of Newport, Kentucky, having taken or subscribed the oath required by said act, and having sworn that he owns one-half, and that James Walls, of the same place, owns the other half of the steamer hereinafter named, and that they are citizens of the United States and sole owners of the ship or vessel called the Belle of Cincinnati, of Newport, Kentucky, whereof he, the said Robert Air, is the present master and, as he has sworn, is a citizen of the United States; and that the said ship or vessel was built at New-

port, in the State of Kentucky, in the year 1853, and is now new, and is intended to be used as a ferry-boat. The usual certificate of hulls, boilers, machinery, &c., having been filed, and the undersigned, Surveyor of the Port of Cincinnati, having certified that the said ship or vessel has one deck and no mast, and that her length is ninety-five feet, (95 feet,) her breadth thirty-two feet, (32 feet,) her depth four feet, (4 feet,) and that she measures one hundred and ten $\frac{5}{9}\frac{4}{5}$ tons, ($110\frac{5}{9}\frac{4}{5}$ tons,) and is square built; that she is a steamer, has square stern without tuck, no gallery and no figure-head; and the said Robert Air having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said steamer Belle of Cincinnati has been duly enrolled at the Port of Cincinnati.

Given under my hand and seal, at the Port of Cincinnati, this 13th day of September, in the year 1853.

[SEAL.] S. B. W. McLEAN,
Surveyor of Customs.

District and Port of Cincinnati, to wit:

I, S. B. W. McLean, Surveyor and Inspector of the Revenue in and for the Port of Cincinnati aforesaid, do hereby certify that the within enrollment is truly copied from the original record of enroll-
[161] ment on file in this office.

In testimony whereof, I do hereto sign my name and affix the seal of said office, this 18th day of February, 1854.

S. B. W. McLEAN,
Surveyor and Inspector,
By H. OPPENHEIMER,
Deputy.

On the 18th day of February, 1854, the defendants, the President and Common Council of the City of Newport, Kentucky, filed
[162] their answer in the Clerk's Office, in the words, &c., following, viz:

The President and Common Council of the City of Newport, for answer to the charges of the petition of plaintiffs in their order, say, that they admit that a patent was granted for 1,500 acres of land from Virginia to James Taylor, of Caroline county, Virginia, situate at the forks of the Ohio and Licking rivers; and they admit that the land contained within the lines of said patent was conveyed to said James Taylor, of Caroline county, Virginia, by said patent. They admit that the said patentee took possession of said land at the date of his patent, 20th April, 1787, but they deny that from the date of said patent, the *whole* of said tract of land has been owned or occupied or claimed by said patentee; they charge the Town of Newport, after laid out in 1791 and 1792, was excluded from said claim and holding; they deny that the Town of

Newport was first surveyed and laid out on the 14th day of February, 1792, and say that the same was surveyed and laid out the year preceding, viz, in 1791; they admit that the conditions for [163] the disposing of lots in the Town of Newport, "situated at the conflux of the Ohio and Licking rivers, on the upper side of Licking," were annexed to the original plat of 1791, on the 14th day of February, 1792, which conditions were signed thus: "Hubbard Taylor, attorney-in-fact for James Taylor;" and they charge that the same conditions were transferred on to the plat of Roberts' Re-survey of Newport, made the 20th August, 1795, and are referred to in the memorandum on said plat of Roberts' Re-survey, (see the plat of Roberts' Re-survey, dated August 20th, 1795, on file in this cause, or filed herewith as Exhibit A; also the remains of original plat of 1791.)

They most positively—the statement in the petition that said Town of Newport, as thus surveyed, platted, and laid down, did not extend to the Ohio river, and declare that it was surveyed, platted and laid down on the original map of the town, and on the re-survey of Roberts, as extending to the Ohio river on the one side, and to Licking river on the other side.

They most positively deny "that a long and narrow margin of ground intervened between the northern boundary of said Town of [164] Newport, as thus laid out and designated by said proprietor, James Taylor, and the Ohio river."

They positively deny that any land whatever intervened between said Town of Newport and the Ohio river, at any time from its first survey to the present time, and charge that the same always has, from the origin of the town, in the year 1791, to the present time, extended fully and completely to the Ohio river.

That the town was represented in the "conditions" "annexed" to the two plats aforesaid, as being "situate at the conflux of the Ohio and Licking rivers," and those two plats themselves show the town of Newport as extending to the river Ohio.

They most positively deny that the strip of ground between the lots and the Ohio river, as appears by a reference to said two plats, or any part thereof, or any ground in front of the lots of the Town of Newport, was expressly or impliedly reserved by or to the proprietor, or James Taylor, or any of its agents or attorneys; and charge that all of said ground was *dedicated* to the Town of Newport and the public, on the laying out of the town in 1791, and [165] disposing of the lots according to the place thereof in 1791–2, and was expressly re-dedicated by the proprietor as aforesaid, by the plat and re-survey made by John Roberts, 20th August, 1795, and the endorsement on the space between the lots and the Ohio river, which endorsement is in the words following: "Common;" also the words, "*The Esplanade to remain as common forever.*"

They admit that a re-survey and re-platting of the Town of

Newport was made by the proprietor, August 20, 1795, which was recorded; and they say that said re-survey, &c., is commonly called "Roberts' re-survey." But they deny the statement of plaintiffs, that said plat now constitutes the present plat or map of said city, as it was originally laid out and established. And charge that the said re-survey, with the "memorandum" endorsed thereon, and recorded therewith, show the object of said re-survey, and that the old, original part of the town (now City of Newport) remains as it was originally laid out and platted in 1791.

They admit that some blocks of lots were added to the town on the re-survey in August, 1795, between Monmouth and East Row [166] streets. They admit that on the 14th December, 1795, an Act was passed by the Legislature of Kentucky, incorporating said town, but they deny that said act confines the town to 180 acres of land, or that it appropriated that much land to the purposes of the town, and no more. But they charge that said act incorporates said town "agreeably to a plat made by John Roberts, Deputy Surveyor of said county, to be recorded, &c:" the foregoing being the language of said act, and they charge that the land exhibited on said plat of Roberts' survey be the same more or less, was appropriated by said act for the purpose of said town. They admit that sales of lots were made after the said re-survey and plat of August, 1795, but they do not admit that sales of lots were made under that plat only; and state the fact to be, that a very considerable number of lots were sold under the original plat of 1791, and long before the said re-survey in August, 1795. They [167] also admit that no part of the strip of ground in front of the lots of the Town of Newport, as designated on the plats of 1791–2, and of August 20, 1795, and between said lots and the Ohio river, was ever, at any time, laid out into streets and alleys, and for the simple and obvious reason that said street was of itself, and is one broad street, extending the whole length of the town, and in breadth extending from the lots to the Ohio river. They do not admit that the *legal title* to said ground in front of the lots, and on the Ohio river, never vested in the original trustees named in the said Act of December 14, 1795. Nor do they admit that it never has, since that time, vested in said trustees by any subsequent act. They admit that by the seventh section of said Act of December 14, 1795, the following language is word for word used, viz: Section 7. And be it further enacted, that such parts of said town as lies between the lots and the Ohio river and Licking, as will appear by a reference to the said plat, shall forever remain for the use [168] and benefit of said town for a common, reserving to the said James Taylor, and his heirs, and assigns, every advantage and privilege which he has not disposed of, or which he would by law be entitled to.

But they deny that at that time, (December 14, 1795) any bene-

ficial interest whatever remained in the said proprietor, James Taylor, to "such part of said town as lies between the lots and the river Ohio and Licking, &c," and say that he had "disposed" of every beneficial advantage and privilege in said strip of ground, and that by law he was entitled to no advantage or privilege in said ground, at the time of the passage of said Act of December 14, 1795; that if any thing remained in him at that time, it was the mere naked, legal title, and at most, that was all he had not disposed of, or which "by law" he would be entitled to. That all beneficial use and interest in said strip of ground was, by the acts of said Taylor, gone from him, and the same was dedicated to the Town of Newport, then existing, and as it might thereafter exist [169] forever, and beyond all control of the proprietor. That all which said seventh section of said act attempts to reserve to Taylor is that which he had not disposed of, or that which by law he would be entitled to. They say that the charge in the petition, that the entire land in front of the lots, as laid down on the plats of Newport of 1791–2, and 1795, &c., is embraced in said patent to James Taylor, of Virginia, they do not know to be true and require proof thereof.

They deny in most positive terms the statement of plaintiffs, that the entire strip of ground in front of the lots and on the Ohio river has been continually and uninterruptedly held, claimed, and occupied by said James Taylor, of Va., or his vendees adversely or otherwise, for sixty-two years. They deny that any part of said strip of ground has been held or claimed, or occupied, by a said James Taylor, or any of his vendees, or any person claiming by, through, or under him, from any length of time from the original surveying and laying out of the town up to this time; that the steamer Commodore commenced running as a packet-boat between Newport and Cincinnati, and landing on said strip of ground, [170] which was on the day 1854. That during all that time, from 1791–2 to the day of 1854, the Town of Newport have claimed, held, used, (occupied as much as public ground could be occupied by a city or town,) all of said strip of ground, and have from time to time, during a space of more than thirty-five years, made improvements on said strip of ground. They have made and paved landings thereon, and improved the same to protect it from washing away, at great expense. They have expended at least $ in said works, all of which was done with full knowledge of said James Taylor, dec'd, the ancestor of one of the plaintiffs; and they charge that some of said improvements were in fact made partly by donation and subscription in aid of the town, and that said James Taylor, dec'd, in common with other citizens of Newport, contributed to some extent to the town for that purpose; but the improvements were all made by the town from that time to this, except some repairs that were made on the wharf at the foot of

York street, where the ferry-boats of said plaintiff Air land, which repairs were made by plaintiff in the year 1853. But said repairs were not made by them until they had first solicited the city authorities to make them, and inasmuch as they did not feel disposed to make said repairs at that time, said plaintiffs were permitted to make said repairs themselves. During all of said time, from 1791–2 to the commencement of the running of the said steamer Commodore, as aforesaid, these defendants deny that said James Taylor, of Caroline county, Va., or his son, James Taylor, dec'd, the ancestor of the pl'ff, James Taylor, or the plaintiff, or either of them or any other person, has held, claimed, or occupied said strip of land or any part thereof, adverse to the Town now City of Newport, or that the said plaintiffs, or those under whom they claim, have ever claimed said ground or any part thereof, or anything appertaining thereto, except their claim to the legal title thereof, and the grant of ferry as incident to the legal title. They deny that said pl'ffs, or those under whom they claim, have ever claimed wharfage, or the control of the wharves or landings on the Ohio or Licking [172] rivers, in front of the lots in Newport, or pretended to claim it until the running of the Commodore aforesaid. They admit that, on the 29th day of January, 1794, the Mason County Court granted to James Taylor of Carolina county, Va., a "public ferry" privilege at Newport, over the Ohio river, in front of the town, which grant was in the following words:

Upon motion of James Taylor, a "public ferry *a public ferry* is established from his lands on the Ohio river, over the same in front of the Town of Newport, to have and receive the same fare as is allowed from the opposite shore."

But they deny that said Court at that time had any jurisdiction over the subject of ferries upon the Ohio river, or over the subject of ferries at all, and they deny that said order or grant was valid legal, or binding, or of any force whatever. They deny that under said order the said James Taylor, at considerable cost and expense, placed a ferry-boat with the necessary fixtures and hands on the Ohio river, in front of Newport, or that he continued to run said ferry from the period of its grant until the 8th day of June, 1799, [173] and call for proof thereof.

But they charge that it was to his interest to run a "public ferry," then in accordance with said grant, in order to promote the sale of the lots in the Town of Newport, and build up a town there, and render the balance of his 1500 acres of land more valuable. And they charge, that so desirous was he to establish and people the town, that among the written "conditions" for disposing of lots, &c., annexed to the plat of 1791–2, he offered 18 out-lots of three acres each as a bonus to the first 18 actual settlers in the town.

They admit, that on the 8th day of June, 1799, the patentee, James Taylor, of Va., conveyed to his son, James Taylor, dec'd, of

Kentucky, that portion of the 1500 acres included in his patent, not included in the limits of the Town of Newport. The lines, courses, and distances named in said deed show that the beginning point is on the bank of the Licking river, thence along the *back line* of the patent N. 45°, E. 446 poles across Duck creek, near a fork thereof; thence north 40°, W. 300 poles to five beech pointers on the bank of the Ohio river; thence along the bank of the Ohio [174] river to a large poplar on the bank of the Ohio river, which poplar is the upper boundary of the Town of Newport; thence along the several boundaries on the *land side* of the Town of Newport, as established and ascertained by law, and the recorded plat thereof, in the Court of Campbell County, in the State of Kentucky, until the line strikes Licking river, thence up the said river Licking, as it meanders, to the beginning. They deny the novel assertion of the plaintiffs, that said deed conveys to said James Taylor, of Ky., all the land "surrounding and adjacent to" the Town of Newport, including the strip between the lots and the Ohio river.

They deny that the grantor therein had the power to convey it, if he had the will, as said ground was, at the date of said deed, public property, and had been for eight years, by virtue of the implied dedication by the first and original plat and survey of 1791–2, and sales of lots made under it, and deeds therefor by their numbers and location, as designated on said plat; also, the express [175] written dedication on the space between the lots and the river on the plats of Roberts' re-survey of August 20th, 1795, and sales of lots under that plat prior to 14th Dec., 1795, when the act was passed incorporating the town.

They do not admit that said Taylor, of Ky., took possession of all of the land described in said deed, or the ferry that had been attempted to be granted by the Mason County Court, as aforesaid, and require proof.

They most unequivocally deny that said Taylor, the grantee in said deed of 1799, had used, occupied, or claimed as his own, continually and uninterruptedly, or for any space of time, said strip of ground between the lots and the Ohio river, from the date of said deed to the day of his death.

They deny that he ever set up any pretence to any part thereof, or to anything appertaining thereto, except his claim to the legal title thereof, and the right to be the depository of the grant of ferry as incident to and dependent upon the legal title.

They deny that he ever claimed wharfage, or the control of the wharves or landings, or any beneficial interest growing out of the [176] same, in the strip of ground between the lots and the Ohio and Licking rivers.

They deny in positive terms the aforesaid repeated claims in the petition of ownership, possession, claim, &c., of plaintiffs and those

under whom they claim, to said public lots between the lots and the Ohio and Licking.

They charge that the ancestor of the plaintiff, James Taylor, had always recognized the right of the Town, now City, of Newport to said strip of ground, in every particular, except the mere legal title and the grant *and the grant* of ferry as incident to that legal title, and that these defendants never heard of the claim set up in plaintiffs' petition until since the starting of the Commodore between the Port of Cincinnati and the Port of Newport. They also positively deny that the plaintiffs or either of them have held possession and exercised control over said strip of ground since the death of said James Taylor, in November, 1848. They deny that said James Taylor has any grant to said ferry at all, in his capacity as executor of the estate of James Taylor, deceased, or that he has any right whatever, either in his fiduciary character as executor or in [177] his individual character, to lease out to the plaintiff, Air, or to any other person, said pretended ferry franchise, nor has he the right to control the same; and of this they require strict legal proof. They admit the establishment of Campbell County. They also admit the act of 1806, concerning ferries, requiring the grantee of a ferry on the Ohio river to be the holder of the legal title to the land. They admit that, at the June Term of 1807 of the Campbell County Court, James Taylor, the ancestor of James Taylor, the plaintiff, obtained a grant of ferry from Newport over the Ohio river in front of said town.

They deny that said ferry was kept up at "great expense" by said James Taylor from 8th June, 1799, the date of his deed, to the time of his death.

They deny that a steam ferry-boat was placed on said ferry in the year ——.

They deny that said ferry has been kept up in strict accordance with the requisition of the law from 1799 to the present time.

They deny that there has been good and sufficient boats run, or [178] that they have run for the accommodation of the public, and especially for ten, fifteen, and even twenty years past; and say that the same have been run to make money, rather than accommodate the public.

They do not admit that no other ferry can be established from the front of Newport over the Ohio river. They do not admit that the legal title to the ground between the lots and the Ohio river vested in James Taylor, deceased, by the deed of June 8th, 1799, or continued in him from that time to the time of his death; and they deny that the legal title to said ground vested in one of the plaintiffs, at the death of said James Taylor, as his executor. They deny that by the decision in the case of the Trustees of Newport *vs.* James Taylor, (6 J. J. Marshall,) it was adjudicated and settled that the right to the entire strip of ground between the lots and the Ohio

river was in Taylor. Such a judgment was not needed, and uncalled [179] for. They deny that any other matter was in issue in that case than simply two questions: first, whether the public wants required the establishment of the ferry proposed? and, secondly, the purely legal question, were the applicants the holders of the legal title to the land at the point of the proposed ferry? They deny that any beneficial or equitable interest or use in said ground could be legitimately property, or legally determined in that case, and they deny that the question of wharfage could have been or was settled in that case. They admit that, by said decision, it was determined that the title to said strip of ground on the Ohio river was not at that time vested in the Trustees of Newport making the application.

They do not admit that the Court, in said case, decided that the title to said strip of land between the lots and the river had passed by the aforesaid deed of June 8th, 1799, of James Taylor, of Va., to James Taylor, of Ky., and they deny that it was necessary for the Court so to decide in order to determine the question of the [180] right of Newport to a grant of ferry. They also admit that it was acceded in the same case, that the right of common or use of the esplanade or strip of ground between the lots and the Ohio river, dedicated to the town, was not inconsistent with the reservation of the legal title by the proprietor, and the right to receive the grant of ferry, as the holder of the legal title, &c.; but they deny that the question of the right of Taylor to become the grantee of the ferry was the question before the Court for adjudication. The question was, the right of the applicants to a grant from the point proposed. They would have to show themselves the holders of the title, whether any person contested their right or not, or else the Court must refuse them the grant.

They deny that the reasoning of the Court, upon other matters not in issue in the cause, in order to show the correctness of their conclusions on the very point really at issue, is an adjudication of those matters, and of binding authority upon the parties, although [181] such reasoning is entitled to respect and consideration. They deny that the Legislature did revest, or that it had the power to revest, in James Taylor, by the Act of December 14th, 1795, any rights which he had parted with, and which had been acquired by the Town of Newport and the public, by the dedication of the ground before mentioned. They charge that the Court determined, in said case, that the strip of ground between the lots and the Ohio river and Licking constituted part of the Town of Newport. They do not admit that the Court intimated, in said decision, that all future ferries that might thereafter be established would belong to Taylor; and these defendants deny that the Court could so determine. They charge that, if the Trustees, who applied for the grant, were then refused it, because the legal title was not in them, still, if they acquired the legal title the next day, they might then become the

grantees. "The sole question to be considered, (say the Court, in the case aforesaid, 6 J. J. Marsh., page 136,) is, therefore, whether the appellants have shown that they possess such an interest in the [182] ground on the Ohio river, and between that river and the lots in Newport, as will entitle them to the grant of a ferry across the river to Cincinnati." This question may be resolved into two subordinate propositions. That was the sole question in that case; and the Court itself says no other question could be decided in the case, except, perhaps, such minor questions as were absolutely necessary to the determination of the main one, and they deny that any other was determined. They admit that James Taylor, the grantee in the deed of June 8, 1799, died on the 9th day of November, 1848, leaving a will, and that the plaintiff, Taylor, qualified as executor thereunder. They do not deny that James Taylor, deceased, also attempted to direct, by the 16th and 17th sections of said will, what should be done with the ferries, of which he was the grantee, from Newport, on the Ohio and Licking rivers; and that he also attempted to bequeath the profits of said ferries, and also attempted to bequeath *his right and title to the esplanade, &c.*, but they deny [183] that he had any power, in his life-time, to control said ferries after his death; that said ferries never were established as his private right and benefit, but for the public good; and they deny that he had the power to control them by the provisions of his will. They deny that he had any right to the profits of said ferries in his life-time, or the benefits and uses thereof, or that he had the power or right, in his life-time, to dispose thereof after his death; nor was he, in his life, nor in his said executor, widow, or heirs, entitled to any rents, uses, benefits, or profits in said ferries, or any other that might be established there. And they also deny, in most positive terms, that said James Taylor, deceased, the ancestor of one of the plaintiffs, had any right or beneficial interest, whatever, in said esplanade, or any part thereof. They deny that a grant of a ferry privilege was made by the Campbell County Court, at the December Term, 1848, or at any other time, to Jno. W. Tibbatts, or Ann, his wife, Geo. T. Williamson, and Jane M., his wife, H. T Harris, and Keturah L., his wife, and James Taylor, one of the plaintiffs. They [184] do not deny that the Court made an order upon the subject, allowing them to file a bond in the Clerk's office in ten days; a copy of said order is here filed as Exhibit 1. But they deny that said order was a grant of ferry to said persons, and charge that it was an order unauthorized by any law then in force, and was void. They deny that the plaintiffs, or either of them, have any grant of ferry over the Ohio river, at Newport. They deny that the ferry granted to James Taylor, deceased, the ancestor of James Taylor, the plaintiff, either passed by said will, or descended to his heirs. They admit that the legal title to said esplanade, if in said James Taylor deceased, might pass by devise or descent, and the right to

become the grantee of a ferry, as dependent upon the legal title, might pass also. They deny that James Taylor, in his life-time, had any power, or could lease out said ferry in his life-time, so as to continue and have effect after his death. They deny that he could thus bind the government from which and by authority of which [185] said grant was made. They deny that said Taylor, plaintiff, as executor, or otherwise, had any power or legal right to lease any part of the said esplanade or public landings to said plaintiff, Air, and charge that all of the beneficial interest and use of said esplanade or public landings belong to the Town, now City, of Newport, and have so belonged to the town and city ever since the dedication of said ground by the proprietor thereof, in 1791–2–3–4–5, to said town, and until the present time. They admit the revision of the ferry law of Kentucky, in 1852. They deny that the executing of any bonds, at the March and April Terms of the County Court, 1853, gives them a ferry franchise. They deny that the plaintiffs, or either of them, have been at a very heavy cost and expense in improving the landings and macadamizing and grading the same. They admit and charge that said plaintiffs solicited the city authorities of Newport to repair the landing at the foot of York street, on said esplanade, in the year 1851, and the city not feeling disposed to make said repairs at that time, the said plaintiffs were permitted [186] by the city authorities to make said repairs out of the enormous profits in their hands, occurring from the running of said ferry-boats from said landing over the Ohio river; which profits, these defendants charge, are justly, legally, and equitably the property of the City of Newport, and that the plaintiffs are trustees for the same, for the use and benefit of the city, so long as they continue to run said ferry-boats. They deny that said Air has, from the period of his first lease, been in the continued possession of the landings on the Ohio. They admit that he has landed the boats, run by him at said landing, at the foot of York street, but state that said landing has also been used by the citizens of Newport, and the public at the same time, without let or hindrance. They say, that if said Air is required to keep two large, safe, and expensive ferry-boats, handsomely fitted up, that he is required to do a great deal more than he ever has done; and they deny that he has ever kept that kind of boats, as charged.

[187] They charge that plaintiffs have never run two boats, until since the day of , 18 , and until compelled by the Court to do so; and that said boats, so far from being the kind of boats stated by the plaintiffs, were inconvenient, badly arranged, insufficient, and illy calculated, and badly fitted up for the immense trade, commerce, and carrying of passengers between Newport and Cincinnati.

They deny that said boats run from daylight, of each day, until midnight, and charge that only one boat is run at night, and that

an extra charge is made to passengers for that, and frequently only one boat is run in the day.

They say that frequent delays were made in the passage of said boats, and there was a manifest want of accommodation until the steamer Commodore was put into the trade between Newport and Cincinnati. Since then, they admit the delays have not been so great. They deny that the expenditures for hands, or any other expense of fitting up and running said boats, are anything to com- [188] pare with the immense income derived from the business thereof. They deny that said plaintiff, Taylor, has any legal right or authority to charge or collect rents from the said Air for running said boats and landing them at the foot of York street, on the esplanade, as ferry-boats aforesaid. They charge that the City of Newport is entitled to all the beneficial interests in said esplanade, and all the landings thereon. They deny that said Air has looked to the increasing population of Newport, &c., for some reimbursement for his outlays and expenses, and call for proof.

They most positively deny, that the two ferry-boats of the plaintiff Air were sufficient as run, or sufficient at all to accommodate all who crossed at Newport.

They deny that the running of other boats, by other persons, would involve the plaintiff, Air, in ruin, although they admit that the manner in which his two boats are fitted up, and run, and their insufficiency, would greatly induce the public to patronize other boats. They deny that the estate of James Taylor, deceased, has [189] any beneficial interest in the ferry franchise at Newport. They admit that, at the February Term, 1850, of the Campbell County Court, these defendants applied for a grant of ferry from Newport over the Ohio river, as they had the right to do, as the Court was open equally to them as well as to others, and that the Court gave them the grant. They admit that they did not, before making said application, supplicate the plaintiffs for the privilege to do so, neither did they consult them as owners or lords of the soil before doing so, but said application was made in open Court, one of the heirs of said James Taylor, deceased, being present. They deny that all the ground on the river, and from which said grant was obtained, was in the possession and occupancy of said Air, under his lease. They admit that said case was taken up to the Circuit Court, and thence to the Court of Appeals, and there determined that the President and Common Council of Newport were not entitled to a grant of ferry from the esplanade over the [190] Ohio river, as they have not shown that the legal title was in them. They charge that the same question was before the Court for adjudication, that was before them in the case referred to in 6 J. J. Marsh, aforesaid, viz: Had the applicants shown themselves entitled to the grant? Had they shown that they had acquired the legal title since the case reported in 6 J. J. Marsh,

aforesaid, and that in 1850 they were the holders thereof? The mere legal question, were they then the holders of the legal title? was the question for adjudication. As to any "hopes" of the plaintiffs, as set forth in their petition, these defendants are advised it is not material for them to answer. And as to the disclaimer of the plaintiffs, that they have never exacted from the city, or any of its officers and inhabitants, any charge for wharfage, or any charge whatever for landing, either property or commodity of any sort thereon. As to the foregoing disclaimer, these defendants admit that it is true as stated, and they were surprised to see the unreasonable and most unjust pretence of claim to the right to [191] make said charges asserted in their petition at this time, and especially as the city has claimed, used, and occupied the said ground for more than fifty successive years, and have made and paved landings to low waters, and made improvements thereon more than thirty years ago, and the proprietor of the town received pay fifty times over for said land dedicated to the town, in the enhanced value of the lots and other lands back of Newport. They deny that they have any interest whatever in the steamer "Commodore," or in said Packet Company, or that they have confederated with their co-defendants, to deprive the plaintiffs, or either of them, of their rights. They admit that they rented the landing at the foot of Monmouth street, in said city, to said Packet Company, as they had the right to do, as it is a public landing on the Ohio river, belonging to the Town, now City of Newport, and which was improved and paved by the Town of Newport, in the year , at great expense, and being a portion of the ground dedicated as [192] aforesaid, in 1791–2–3–4–5, and claimed and used by the town, from that to the present time. They deny that said leasing is without claim or shadow of title, and against law. They deny that said steamer Commodore is running between the public landings in Newport and Cincinnati, without lawful right and authority so to do. They charge that their co-defendants, or some of them, caused all of the necessary requisites to be fulfilled agreeably to the laws of the United States, in preparing and fitting said boat Commodore to receive a license and authority from the United States, to engage and run in the coasting trade, and that she had full right so to do, during all the time she was engaged in the trade between the Port of Newport, in Kentucky, and the Port of Cincinnati, in the State of Ohio, and still has such right. They state that while so running, she was legally engaged in the commerce between the States aforesaid, and running from a public landing in [193] one State, to a public landing in another State. They charge that the commerce, trade, and transportation of passengers between said two ports, is immense, and still increasing. They deny that the company owning the steamer Commodore, styled themselves a "ferry company." Their style was, and is, "The

Cincinnati and Newport Steam Packet Company." And these defendants charge that the said company had the full authority of law, to run said boat between said port, or any other ports on the Western waters, under said license and authority, and under the laws of the United States, and that no State law or authority has the power or right to prohibit them. They deny the reiterated claims of the plaintiffs, or either of them, to the Esplanade or ground between the lots and the river. They deny that the running of the said packet-boat Commodore, between Cincinnati and Newport, is doing irreparable injury to the plaintiffs. They deny all charges of an attempt, on their part, to defraud or to cheat the plaintiffs out of any of their rights.

[194] They deny that said plaintiffs, or either of them, are entitled to wharfage, or any other beneficial interest in said esplanade or ground between the lots and the rivers Ohio and Licking, or that the estate of James Taylor, deceased, is entitled thereto.

Second. These defendants, for further answer and counter-claim, charged that they are entitled to all the beneficial uses, interests, rights, profits, and emoluments, appurtenant, or belonging to, or issuing out of, or depending upon the esplanade or strip of ground between the lots in the Town, now City of Newport, and the Ohio river.

They charge, that in the year 1791, the said Town of Newport was surveyed and laid out by the proprietor thereof, James Taylor, of Caroline county, Virginia, with all the streets, alleys, and public grounds, including the "Landing," "Esplanade," "Common," or "strip of ground" between the lots and the Ohio river, and extending from, and including Monmouth street, to the confluence of [195] Licking and Ohio rivers, and a plat thereof was made. That on the 14th day of February, 1492, the conditions for disposing of lots in the Town of Newport, were annexed to said plats, which conditions were also afterwards annexed to the plat and re-survey of said town, by John Roberts, the 20th of August, 1795, as appears from a copy of said plat, and "conditions," and "memorandum" thereto annexed, which copy is filed with the answer of said Wolff, &c., and is made a part of this answer. Said memorandum, among other things, modifies, to some extent, the said "conditions" that were annexed to the original plat. That under said plat of 1791–2, and in the year 1791–2–3–4, the said proprietor, James Taylor, of Virginia, through his agents Hubbard & James Taylor, sold and disposed of a large number of lots in said town, by their numbers and location, with reference to the streets, alleys, and public grounds, as designated on said original plat of 1791--2. The facts of these sales of lots is fully established by the record in the ferry case of 1850, filed in this cause by the plain- [196] tiffs, as a part of their petition, and particular reference is made to the deposition of James Taylor, the ancestor of the plain-

tiff, Taylor, as it appears in said record, and the statement of F. A. Boyd, in reference thereto, also in said record. They charge that said James Taylor, deceased, says in his said deposition, that "there was a few lots sold in 1791 and 1792, but no public sale took place until 1795, September, from 30 to 50 lots were sold at private sale, and given to individuals prior to the public sale in 1795." That was the statement of said James Taylor, deceased, in his life-time, made by him under oath. That there are thirty-seven in-lots upon the original map, or plat of 1791–2, with the names of the persons written upon, "reserved," and those not endorsed at all over and above those lots, which are mentioned in the deeds hereinafter referred to, said original plat filed in this cause is referred to and made a part of this answer.

The charge that on the 9th December, 1793, Jas. Taylor, of Va., by his att'y-in-fact, made a deed to John Barth, of Mason County, [197] and Town of Newport, Ky., conveying to him the following lots in the Town now City of Newport, viz: twelve out lots of three acres each, and known on the plan of said town, as lots Nos. 1, 2, 3, 4, 5, 6, 9, 12, 16, 17, 23, and 24, with all improvements and privileges appertaining to the said lots. Also, a deed to Nathan Kelley, of certain lots in the Town of Newport, Mason County, Ky., "being described" in the plat of said town, viz: The in-lots Nos. 10 and 11, and on Front street, the other two out-lots, No. 15 and 18, containing three acres each, "with all privileges and improvements appertaining to said lots," said deed dated January 23, 1794. Also a deed to Jacob Fowler, dated January 24, 1794, of "a certain lot in the aforesaid Town of Newport," known in the plan of said town by lot No. 5, in-lot, and on Front or Water street, with all improvements and privileges appertaining to said lot. "They charge that by the surveying, platting, and laying out of the town into streets, alleys, and public grounds, which town was so laid off on a large navigable river, or, in fact, at the confluence of two [198] rivers, and after the sales of lots, according to said plat, by their numbers and deeds to purchasers for some of said lots conveyed by their numbers, as they appear upon said plat, and some of them calling to lay on Front or Water street, and all of them conveyed with "all the improvements and *privileges* appertaining to them," they charge that by all of these acts, done and performed by the proprietor of said town, from its first being laid out in 1791, up to the 24th day of January, 1794, a full and complete *dedication* to the town was made by the proprietor of all the streets, alleys, and all other grounds which appeared upon said plat to be for public use. They charge that by said "dedications" all of the beneficial and equitable rights, interests, and uses to said strip of ground between the lots and the river Ohio were irrevocably, absolutely, and forever gone from the said proprietor and vested in the people of the then and future Town of Newport, and that

nothing remained in him but the mere naked title; and they [199] expressly charge that he held the legal title to said strip of ground, and to the streets and alleys of the town in trust, for the use and benefit of said town. They charge that said town was laid off to extend and did extend to the Ohio river, and that the same was located on the bank of the Ohio river, (which is a great navigable stream,) for the use and enjoyment of the benefits of said river by said town and the inhabitants thereof. They charge that no reservation whatever of any part of the streets, alleys, or any of the grounds which appeared to be for public use or any interest therein, was made known to any of the purchasers of lots in said town or any one else, and that no such reservation was in fact made. They charge that prior to said 28th of January, 1794, no ferry privilege whatever had been granted to said James Taylor, of Va., or to any other person, or attempted to be granted over the Ohio river, from Newport or from the land upon which said town was laid out, before the same was laid out. They charge that said Taylor obtained a grant of ferry from Newport over the Ohio in [200] front of the said town from the Mason County, Ky., on the 29th day of January, 1794, which was the first ferry ever granted to any person at that place. They charge, however, the County Courts of Kentucky were then Courts of limited and special jurisdiction, and that there was at that time no law in Ky., which gave County Courts jurisdiction over ferries in any case. That the Legislature at that time had not delegated that power to any court or tribunal whatever, but had reserved the power to itself, and they charge that said grant was null and void. They charge that other deeds were made by said Taylor, of Va., to purchasers of lots in said town which also conveyed the lots, with all improvements and "*privileges*," in the year 1794. They charge that, on the 20th day of August, 1795, John Roberts, Deputy Surveyor, for Campbell County, Ky., made a *re-survey* of the said Town of Newport, in order to ascertain the surplus in some of the "squares," and that there was also at that time two squares or blocks of lots, with streets, alleys, and public grounds laid off, extending further up [201] the Ohio river from Monmouth street to East Row street, and running back to the out-lots. That a plat of said re-survey was made, and the "conditions for disposing of lots," which had been annexed to the original plat, were also annexed to the plat of the said re-survey, together with a "memorandum" of said re-survey, and a modification or "relinquishment" of the conditions of forfeiture, &c., for not building, &c., which are dated September 7, 1795, and signed and sealed by James Taylor, by his attorney-in-fact, James Taylor, the ancestor of plaintiff, James Taylor, and under whom the plaintiffs claim in this action, which plat of said re-survey was recorded in the Campbell County Clerk's office; a certified copy of said plat filed as an Exhibit by their co-deft's is

referred to as part of this answer. They charge that upon the space between the lots in said two blocks and the Ohio river, as appears from said Roberts' plan, was written the word, "common." They charge that upon the space or strip of ground between the lots as originally laid off and the Ohio river, as will appear by reference to said plat of John Roberts, having been previously dedicated to the town for public use, the following words were written there-
[202] on, viz: "The esplanade to *remain* a common forever." They aver that said re-survey and platting of said town, Aug. 20, 1795, and the writing of said words between the spaces between the lots and the Ohio river, was not only an express re-dedication of said ground in writing to the town and inhabitants thereof, but was also an express recognition of the former dedication of all that part of the space between the lots and the Ohio river, and extending from Monmouth street to Licking river. They charge that on the 1st day of September, 1795, James Taylor, of Va., by his attorney-in-fact, James Taylor, conveyed to the Justices of the Campbell County Court, lots in Newport, No. 79, 80, 81, 82, 83, and 84, for the public square for the Court House of said county, &c., and Newport became the county seat of Campbell county. They charge that a public sale of lots was made in said town by the proprietor, in September, 1795, and that divers lots were sold and deeded to the purchasers thereof, by said proprietor of Newport, with all "privileges," in the year 1795, incorporating said town by legislative enactments. They charge that before the pas-
[203] sage of said act of Dec. 14, 1795, the Town of Newport aforesaid was fully fixed and established as an actual existing and subsisting town, in fact, and they aver that the proprietor thereof by his aforesaid acts and deeds had actually, absolutely, and irrevocably dedicated to said town and the inhabitants thereof every right, claim, use, and emolument, in all the streets, alleys, and public grounds, esplanade, and commons, as shown and exhibited by said original map filed with the answer of their co-def'ts, Wolff, &c., and made a part of this answer, and as also shown and expressed by the plat of said Roberts' re-survey of the 20th August, 1795. They aver that said act of Dec. 14, 1795, expressly adopts the re-survey of John Roberts, and incorporates the town according to that plat and re-survey. They aver that at the time of the passage of said act nothing *remained* in the proprietor to the streets, alleys, commons, esplanade, and public grounds, but the mere naked legal title thereto, and that he held the same in trust merely for the use and benefit of the town and the people thereof. They charge that by the seventh section of said act of Dec. 14, 1795, it is
[204] expressly declared that such part of said town as lies between the lots and the river Ohio and Licking, as will appear by a reference to said plat, shall forever remain for the use and benefit of the said town for a common. They charge that it expressly gives the

Town of Newport all use and benefit to such part of said town, and declares that it shall ever remain for their use and benefit, "reserving to the said James Taylor, and to his heirs and assigns, every advantage and privilege which he has not disposed of, or which he would *by law* be entitled." These def'ts aver that all which he had not parted with at the time of the passage of said act was the *mere naked legal title*, and that title was all which remained in him and which he could reserve to himself in that strip of ground, and they charge that he held that title in trust, for the "use and benefit of said town." They further charge that all those claiming under him hold said strip of ground as mere trustees for the "use and benefit of said town, now City of Newport." They charge that [205] James Taylor, dec'd, the ancestor of James Taylor, one of the plaintiffs, acquired nothing more than the naked legal title to said strip of ground, in his deed from his father, June 8, 1799, if he ever acquired anything, and that he held the same as trustee for the use and benefit of said town, during his life. They charge that it is true, that in the year 1807, the said James Taylor obtained a grant of ferry from the County Court of Campbell, from Newport, over the Ohio river, and they aver, that said ferry was so managed and kept up by him, with flats and skiffs, as to make it pay its way, but these defendants do not suppose that said ferry paid much profit until within the last sixteen or eighteen years. They charge that said Taylor could only become the grantee of said ferry, by holding the legal title to the land, and that the Town of Newport was entitled to all the uses and benefits of said land; and they charge that said ferry was held by said Taylor in his life-time, in trust for the "use and benefit of the Town of Newport, and that all benefits, and profits, and emoluments issuing therefrom, after paying the just and reasonable expenses of keeping up [206] and running the same, belong to and are the property of the Town, now City, of Newport. They charge that said ferry has always paid its own way, from its establishment in 1807, though it may not have yielded a very considerable profit, until the year 1835 or '6, since which time it has yielded a profit of per year up to day of 1845, and from that time until the present, the average profits over and above paying all expenses and a fair remuneration for conducting and carrying on the same, is $ per year, up to the day of November, 1848, when said James Taylor departed this life. They charge that the plaintiff, Air, has had the management and control of said ferry, as the lessee of said Taylor, deceased, from the day of November, 1844, to the time of the said Taylor's death, and that he has collected large amounts of said profits. They charge that said Taylor, in his life-time, nor said Air, never accounted or paid over to the Town of Newport any part of said profits, and that said Air and [207] the estate of Taylor are responsible for the same. They

charge that since the death of said James Taylor, the plaintiff, James Taylor, and Robert Air, as his lessee, have claimed the right to control and run said ferry, claiming under said James Taylor, deceased, and that the emoluments and profits of said ferry, over and above the actual costs and expense of running the same, and a fair remuneration to them, has been exceedingly large; that their average profits since the death of said James Taylor, November 1848, has been $; and they, nor neither of them, have not accounted or paid over any part of the same to the Town, now City, of Newport, who are the beneficiaries, and entitled to all of the uses and benefits thereof. They charge that said James Taylor, deceased, was the agent and attorney-in-fact of his father, James Taylor, of Va., and engaged in the business of selling lots, &c., in Newport, in the years 1794–5–6–7–8–9, &c., and knew of the trusteeship of his father, of said ground, for the use and benefit of Newport, when he took said deed of June 8, 1799, and was bound by said trust. They charge that said trust has been a continued subsist-
[208] ing trust—first in James Taylor, Caroline county, Virginia; second, in his son, James Taylor, deceased; and now in his legal representative, James Taylor; and that it still is a continuing, subsisting trust for the use and benefit of the Town, now City, of Newport.

They charge that the Town, now City, of Newport has increased in population within the last few years very considerably; that in 1830, the population of the town was between seven hundred and one thousand; in 1850, it was over six thousand; and that now there is nine thousand inhabitants in said town. They charge that additions of territory, laid off into streets, alleys, and public grounds, have been repeatedly made to the town, within a few years past, generally extending and enlarging the same, and that the original outlets have been subdivided into lots. They file herewith a skeleton map of the Town, now City, of Newport, of a recent survey thereof, made by J. T. Lewis, civil engineer, marked Exhibit No. 40. They aver that the plaintiff only run one boat at said ferry, until the day of 1851, when they commenced running two boats. They charge that since 1807, when said ferry
[209] grant was made to Taylor, there has been a continual or heavy increase of the business thereof; and since the year 1835, there has been a vast and enormous increase in the trade, commerce, and transportation, between the Port of Cincinnati and the Port of Newport, in the business of said ferry. That there has not only been a great increase of population in Newport, but also in the country around for a considerable distance back of the City of Newport, and that the point of trade for these people is the City of Cincinnati, and their places of crossing is the City of Newport. They charge, that since said plaintiffs have put on the second boat, and been running the two boats, the business of said ferry has

more than doubled, and that the plaintiffs are making large profits out of the said business, besides reaping other advantages of crossing their relatives, agents, &c., free of charge.

Wherefore they pray, that said Taylor and Air may be compelled to pay over said rents and profits of said ferry since the year 1836. That the title of these defendants to wharfage, and the uses and benefits of said wharves and landing, and esplanade [210] may be quitted, and for all proper relief.

ROOT, WEBSTER & KINCAID.

[Order of County Court of Campbell County.]

Exhibit No. I., referred to in foregoing answer, viz:

CAMPBELL COUNTY COURT, November Term, 1848. } To wit:

Ordered, that James Taylor, H. T. Harris, and Keturah L. Harris, his wife, John W. Tibbatts, and Ann W., his wife, and George T. Williamson, and Jame M., his wife, do renew a bond, as heirs of James Taylor, deceased, required by the Act of Assembly approved 22d December, 1806, in relation to ferries, with Samuel Winston, their security, and file the same with the Clerk of this Court within ten days; the said parties being the owners of the ferry across the Ohio river from Newport to Cincinnati.

A copy.

Attest: BEN. D. BEALL, Clerk.

On the 18th day of February, 1854, the defendants, Conway, Simmons, and Sebree, filed their answer herein, viz:

[Answer of Conway, Sebree, and Simmons.]

The defendants, Peter Conway, John J. Simmons, and John Sebree answering, deny that they, or either of them, have any interest whatever in the steamer Commodore; they deny that they, or either of them, are members or stockholders to any extent in the "Cincinnati and Newport Packet Company," which company owns [211] the Commodore, as they are informed. They admit that Peter Conway was acting as captain, John J. Simmons as engineer, and John Sebree as pilot on said steamer Commodore, and charge that they were so employed, as mere hired hands, for wages, and that they had no interest whatever, nor have they now any interests, in the proceeds arising from the running of said steamboat. They charge that said Simmons is a regularly licensed engineer under the authority of the United States and Congress, and that he was employed as such, and in that capacity, on said steamer; they charge that said Sebree is a regularly licensed pilot under the authority of the United States and laws of Congress, and that he was employed on the steamer Commodore; they charge that said

steamer Commodore was a regularly licensed steamboat under the authority of the United States of America, and was fully equipped according to said laws and by said authority; they charge that said steamer had the full, absolute, and complete right to navigate the Ohio river and other navigable waters of the West, and had full authority and right to engage in the commerce and carrying trade among the States, and to run, with regular or irregular trips, as [212] well between the City of Cincinnati, *in* Ohio, and the City of Newport, in Kentucky, as between any other points in different States; they charge that the commerce and trade between the Port of Newport and the State of Kentucky and the Port of Cincinnati, in the State of Ohio, is not only large, but immense; and they charge that said steamer, under her said license and authority, had full right to engage in the commerce, and they deny that any State law or authority had or has the right to prohibit her. They charge that said steamer, being so licensed and authorized, and these defendants having complied with the requirements of the Laws of Congress of the United States, that they had the legal right to engage to run on said boat for hire, as they did do; and they deny that said plaintiffs, or any one else, have any legal or equitable right or authority to enjoin or restrain or prevent them from so doing against their will.

Certified copies of the enrolment, inspection, and license to said boat Commodore are referred to and filed as Exhibits Q, A, Q, B, and Q, Y, in the answer of Daniel Wolff, &c., in this action, and prayed to be taken as part hereof. Also, certified copies of the [213] license of said Simmons and said Sebree, as Exhibits, are filed herewith, and marked Exhibits W and X, and made part hereof.

They further charge, that the landing-place of said steamer, in the City of Newport, Kentucky, was and is at the esplanade, or ground between the lots and the Ohio river, and at the foot of Monmouth street in said city; and that said landing is and has been, for more than fifty years, a public landing for the landing and mooring of all kinds of vessels and water-craft, and the landing and unloading of the same; they charge that a wharf was graded and paved by the Town (now City) of Newport, over said esplanade, at the foot of Monmouth street to low-water mark, at the cost of $5,000. They charge that said Simmons is well acquainted with the landings, wharves, esplanade or common, in the City of Newport, and the said ferry; that prior to the plaintiff, Air, becoming the lessee of said ferry, John Doxon, now deceased, was the lessee thereof, and that said Simmons was employed upon the boat of said Doxon, and for several months, in 1844, was the collector of tolls on said boat; that said Doxon sold out his boat to said Air on the day of December, 1844, and said Air became the lessee of said ferry from [214] James Taylor, deceased; that said Simmons is perfectly ac-

quainted with said ferry, and immediately engaged for said Air in said business and continued with him for five successive years, and off and on most of the time, since then, up to September, 1853; that said Simmons is perfectly acquainted with said ferry, and all of its operations.

He knows and charges that there has been a continued and rapid increase in the commerce, trade, and travel between Newport and Cincinnati since said Air has run said ferry as lessee; that about the time said Air became lessee as aforesaid, Newport took a start, and has increased very rapidly in population; that, in 1840, the population was about 1,200, and now has arrived at near, if not quite, nine thousand persons; that the country adjacent to Newport, and back for many miles has been filling up with population, most of whom do their trading at Cincinnati, and cross the Ohio river at Newport with their produce, stocks, merchandise, &c. That at no time since day of , 1844, has the ferry accommodations been sufficient, between Newport and Cincinnati, to accommodate the public; and most of the time, and especially for some seven years past, the ferry accommodations at said place have been wholly [215] inadequate to satisfy the just and reasonable requirements of the trade and commerce and demands of the public, and are yet insufficient and inadequate. That, nevertheless, said ferry has yielded to said Air and his lessor, Taylor, an immense profit per year, and especially within the last eight years. They state that on the 6th day of May, 1850, said Air placed said ferry under the management of said Simmons, and himself went to visit Scotland, his native country, and from that date said Simmons kept an account of the daily current receipts at said ferry until said Air returned. That from the 6th day of May, 1850, one month, he took in one thousand four hundred and seventy-one dollars. That from the 8th of July to the 10th of August, 1850, he took in one thousand and thirty dollars, at which time said Air returned. That then but one boat was run at said ferry; that boat the said Simmons superintended the building of for said Air; her cost was about six thousand dollars. He states that a steam ferry-boat lasts six years, and that the boat aforesaid, when worn out as a ferry-boat, was worth two [216] thousand five hundred dollars or more. That the expense of running said boat per week, with four hands, including the captain, $40. For coal per week, $35; for contingencies, such as oil, packing-yarn, &c., $15 per week. That said receipts included but a part portion of the pay of those who cross said ferry by the month, quarter, or year, which a large part of the families in Newport do, as that was left unsettled until the return of plaintiff, Air, from Scotland; nor did said Simmons collect any ferriage on the crossing of the teams of his co-defendant, Daniel Wolff, although the crossing done by said Wolff, to and from his rolling-mill, was very great; nor did he collect anything on the crossing done by the officers,

men, and teams of the United States garrison at Newport, which is very considerable, but the same was deferred until the return of plaintiff, Air, as aforesaid. They further state that said months are far below the receipts of many other months in the year; that after vegetables, fruit, and produce are sufficiently matured to be marketable, the crossing of gardeners and farmers, coming from the back country, is immense. That said Simmons has helped to cross over [217] one hundred market-wagons in a single day. That there is now greatly more business for two boats at said ferry than there was for one in 1850; that the trade, commerce, and travel between the States of Ohio and Kentucky, at the points of Newport and Cincinnati, is extremely great, and increasing rapidly every day, and would be much more if the proper facilities for crossing and carrying on the same were offered. They charge that the proportion of manufacturing establishments in Newport, compared with the number of inhabitants in the city, and its location and other advantages is small, mainly for the reason of the wan tof good and sufficient and proper accommodation for transportation over the Ohio river, between Newport and Cincinnati. That said Simmons has been about the esplanade and landings between the lots and the Ohio river, and acquainted with them for seventeen years, and has lived and owned property, and still owns property, on Monmouth street, and the wharf or esplanade. That he was well acquainted with Gen. James Taylor, deceased, the ancestor of the plaintiff, Taylor, and has frequently crossed him on the ferry, and never heard him claim any of [218] the wharves or landings, or any part of the esplanade, for any other purpose than to simply land the ferry-boat, and they deny that he ever set up any other claim thereto than that. They charge that said esplanade has been improved by paving wharves through it to low-water mark, at a large expense by the Town, now City, of Newport. That the plaintiffs repaired the wharves and landing at the foot of York street, in the year 1852, the city having refused at that time to make the repairs. That the city has, also, at very considerable expense, made works to protect the unpaved bank of the river (being part of said esplanade) from washing away. They deny the right of the plaintiffs, or either of them, to any beneficial interest in said wharves or landings, or esplanade, and charge that all use and benefit therein belong to the City of Newport. They deny their right or claim to any control over said wharves or landings. Wherefore, they pray that said injunction against them may be dissolved, and that they recover their costs, and for all proper relief.

ROOT & WEBSTER & KINCAID.
Attorneys.

[219] Exhibit W.

Engineer's Certificate.

No. 176.

Engineer's Certificate.

The undersigned, Inspectors for the District of Cincinnati, certify that John J. Simmons, having been by them this day examined touching his qualifications as an engineer of a steamboat, is a suitable and safe person to be entrusted with the power and duties of First Engineer of a Steamboat, and do license him to act as such for one year from this date. Given under our hands, this 4th day of April, 1853.

Duplicate. THOMAS J. HALDEMAN,
W. W. GUTHRIE.

I, W. W. Guthrie, Inspector for the District of Cincinnati, certify that the above-named John J. Simmons, this day before me, solemnly swore that he would faithfully and honestly, according to his best skill and judgment, without concealment or reservation, perform all the duties required of him as Engineer, by the Act of Congress approved August 30th, 1852, entitled "An Act to amend an Act, entitled an Act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam, and for other purposes." Given under my hand this 4th day of April, 1853.

W. W. GUTHRIE.

Pilot's Certificate.

[220] Exhibit X.

[Pilot's Certificate, No. 263.]

The undersigned Inspectors for the District of Cincinnati, certify that J. W. Sebree, having been by them this day duly examined, touching his qualifications as a licensed Pilot, of a boat on the Ohio river, from Cincinnati to Newport, Covington, and Aurora, they do certify that they are satisfied he possesses the requisite skill as a pilot, and is trustworthy and faithful, and do license him to act as such within the said bounds, for one year from this date. Given under our hands this 4th day of January, 1854.

Duplicate. THOMAS J. HALDEMAN,
W. W. GUTHRIE.

I, Thomas J. Haldeman, Inspector for the District of Cincinnati, certify that the above-named J. W. Sebree, this day before me solemnly swore that he would faithfully and honestly, accord-

ing to his best judgment and skill, without concealment or reservation, perform all the duties required of him as a Pilot, by the Act of Congress approved August 30, 1852, entitled "An Act to amend an Act, entitled an Act to provide for the better security of the lives of passengers propelled in whole or in part by steam, and other purposes." Given under my hand this 4th day of January, 1854.

[221] THOMAS J. HALDEMAN.

At a Court held for the Campbell Circuit, on the 19th June, 1854.

[Order filing Affidavit of Plaintiff.]

"The plaintiffs, by their counsel, produced their affidavit in Court, which being sworn to, was ordered to be filed, which is as follows, viz:

"James Taylor and Robert Air, plaintiffs in the above suit, make oath that since the granting and service of the injunction in the above cause, the defendants, Daniel Wolff and John Simmons and John Sebree have, in total disregard of said injunction, and in contempt of the order of the Court in said cause, violated the same by landing the boat, called the Commodore, designated in said order, upon that part of the Kentucky shore of the Ohio river lying between the lots of the City of Newport and the Ohio river, known and distinguished as the "*Esplanade*," and that said persons, above named, have landed said boat Commodore "on said esplanade since the service of said injunction on them, for the purpose of receiving, landing, and delivering persons and property, and ferrying the same across the Ohio river from said esplanade, to the opposite shore of the Ohio, and that they continued the said landing of said Commodore on said esplanade, and the ferrying [222] and transportation of persons and property on said boat, from the said esplanade to the opposite shore of the said Ohio river, for divers and sundry days after said service. These affiants further made oath that the said Daniel Wolff, with the other owners of said boat, have pretended to sell and dispose of said steamer Commodore to one John Boyd, George R. Fearons, which said pretended sale was made on the day of , 1854, and after the granting of and service of said injunction against said Commodore and her owners, at the time of said purchase, and said John Boyd and George R. Fearons, with full knowledge and notice of the order of injunction of this combination against said Wolff, Conway, Simmons, and others, as *owners* of said Commodore, enjoining and restraining them from landing and running the Commodore from the esplanade to the opposite shore of the Ohio river, and after the service of the same, on the said Conway, Wolff & Sim- [223] mons, have continued in open disregard of said order and injunction, since their said purchase, to land and run said Commo-

dore on said esplanade in front of Newport, to the opposite shore, ferrying and carrying persons and property from said esplanade to the opposite shore across the Ohio river, landing on said esplanade, and are still engaged in the same. Wherefore they pray for a rule against said Daniel Wolff, John Boyd, George R. Fearons, to show cause why they should not be attached for a contempt of Court, in disregard of said injunction.

FINNELL & STEVENSON.

[Order granting Rule.]

And upon their motion a rule is granted them, against the defendants, Daniel Wolff, against John Boyd, and George R. Fearons, to show cause why they shall not be attached for a contempt of Court, in disregard of the injunction granted heretofore in this cause, returnable to the 8th day of this Term. Which rule and return thereon is as follows, viz:

[Rule.]

"The Commonwealth of Kentucky to the Sheriff or any Consta-
[224] ble of Campbell county. You are commanded to summon Daniel Wolff, John Boyd, and George R. Fearons, to appear before the Campbell Circuit Court, on the 8th day of its inst. June Term, to show cause why they should not be attached for a contempt of Court, in disregard of an injunction granted in the cause, wherein James Taylor and Robert Air are plaintiffs, and Daniel Wolff and others are defendants.

Witness, Benjamin Beall, Clerk of said Court, this 20th day of June, 1854.

BENJAMIN BEALL, Clerk.
By G. ARTSMAN, D. C.

[Return.]

Executed on the within-named Daniel Wolff, George R. Fearons, and John Boyd, on the 22d day of June, 1854.

U. CLARY, C. C. C.

And the cause was set for hearing on Wednesday morning, the 3d day of this Term.

[Defendant offered a Supplemental Answer.]

At a Court held for the Campbell Circuit, on the 26th June, 1854, came the parties by their counsel, and the defendant, Wolff, offered a supplementary answer to the plaintiffs' petition, to the filing of which the plaintiffs objected, and the Court not being sufficiently advised, took time to consider, whereupon the defendants

[225] moved to set aside the order of submission, to which the plaintiffs also object.

And afterwards, on the same day, the plaintiffs offered a certified copy of a record, of an application for a ferry franchise in 1795, which, by consent, is ordered to be filed, which is as follows, viz:

STATE OF KENTUCKY,
Court of Appeals.

Pleas before George Meeter and Caleb Wallace, Judges of the Court of Appeals for the State aforesaid, at the Capital, in Frankfort, on the 16th day of May, 1798.

[Taylor *vs.* Bartle.—Record.]

JAMES TAYLOR, plaintiff,
against
JOHN BARTLE.
Upon a Writ of Error to a Judgment of Mason County Court.

And

Same plaintiff
against
Same defendant.
Upon a Writ of Error to a Judgment of Mason County Court.

At a Court of Appeals, for the State of Kentucky, held as aforesaid, on the 8th day of May, 1795, the following orders were made in these causes, to wit:

On the motion of James Taylor, and on inspecting the record produced to the Court, they are of opinion that there is sufficient error in the proceedings to reverse the judgment of the County [226] Court of Mason, establishing a ferry in favor of John Bartle, from his lands in the Town of Newport, across Licking, at the mouth. It is therefore ordered that the Writ of Error, about to be sued out by said James Taylor, shall operate as a supersedeas, and be obeyed as such, upon the said James Taylor entering into bond, in the Clerk's office, as the law directs. On the motion of James Taylor, and on inspecting the record produced to the Court, they are of opinion that there is sufficient error in the proceedings to reverse the judgment of the County Court of Mason, establishing a ferry in favor of John Bartle, from his lots in the Town of Newport, across the Ohio river, to the opposite shore. It is therefore ordered, that the Writ of Error about to be sued out by the said James Taylor shall operate as a supersedeas, and be obeyed as such, upon the said James Taylor entering into bond in the Clerk's office, as the law directs.

On the same day the following bonds were executed to wit:

Know all men by these presents, that we, James Taylor and James Taylor, Sr., are held and firmly bound unto John Bartle, [227] in the just and full sum of one hundred pounds, current money, to which payment, well and truly to be made unto the said

John Bartle, we bind ourselves, jointly and severally, and each of joint and several heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 8th day of May, 1795.

The condition of the above obligation is such, that, whereas the above-bound James Taylor hath this day obtained a writ of error, which is to operate as a supersedeas in the Court of Appeals, to reverse a judgment of the Worshipful Court of Mason County, establishing a ferry across Licking, from his lands in the Town of Newport to the opposite shore. Now, if the said James Taylor shall prosecute the said writ with effect, and shall well and truly pay to the said John Bartle, and the several officers of this Court, such costs as they may be severally entitled to, also, such damages as may be awarded to the said John Bartle, in the said Court of Appeals, then the above obligation to be void, else to be void, else to remain in full force and virtue.

JAMES TAYLOR, [SEAL.]
By his Attorney-in-fact,
JAMES TAYLOR, JR.

In presence of
WILLIS LEE.

JAMES TAYLOR, JR. [SEAL.]

Know all men by these presents, that we, James Taylor, that [228] we, James Taylor and James Taylor, Jr., are held and firmly bound unto John Bartle in the just and full sum of one hundred pounds, current money, to which payment, well and truly to be made with the said John Bartle, we bind ourselves, jointly and severally, and each of our joint and several heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 8th day of May, 1795. The condition of the above obligation is such, that whereas the above-bound James Taylor hath this day obtained a writ of error, which is to operate as a supersedeas in the Court of Appeals, to reverse a judgment of the Worshipful Court of Mason County, establishing a ferry across the Ohio river, from his lands to the opposite shore. Now, if the said James Taylor shall prosecute said writ with effect, and shall well and truly pay to said John Bartle, and the several officers of this Court, such costs as they may, severally, be entitled to, and also such damages as may be awarded to the said John Bartle, in the said Court of Appeals, then the above obligations to be void, else to remain in full force and virtue.

JAMES TAYLOR, [SEAL.]
By his Attorney-in-fact,
JAMES TAYLOR, JR.

In presence of
WILLIS LEE.

JAMES TAYLOR, JR. [SEAL.]

The following are the orders of the Mason County Court, refer-
[229] red to, to wit:

At a Court, held for Mason county, the 28th day of October, 1794, present, John Wilson, Philamon Thomas, and Winston Parker, Gt. Upon motion of John Bartle, he is permitted to keep a ferry from his lands, in the Town of Newport, across Licking, at the mouth, and is to have the same prices for passengers, &c., that other ferries have over the same river.

A copy.

Teste, T. MARSHALL, V. C. M. C.

At a Court, held for Mason county, the 23d July, 1793, present, George Stockton, John Wilson, David Morris, and George Mitchell, Gov. Justices. Upon motion of John Bartle, by his attorney, he is licensed to keep a ferry from his lots, in the Town of Newport, across the Ohio, to the opposite shore, and to have the same fare except the difference in the currency, as is allowed from the opposite shore. A copy, Teste,

J. MARSHALL, V. C. M. C.

Bond with F. Taylor,
Security acknowledged.
T. M., V. C. M. C.

And, afterwards, at a Court of Appeals, for the State aforesaid,
[230] held as aforesaid, on the 16th day of May, 1798.

This day, these causes were heard, and on inspecting the records, it is considered by the Court, that there is error therein, in this, viz: "that it does not appear that the said John Bartle has land bounding on the river or creek, to authorize the Court to grant him a ferry over either. Therefore, it is ordered, that the judgments, aforesaid, be *reversed*, annulled, and set aside, and that the plaintiff recover of the defendant his costs in this behalf expended.

I, Jacob Swigut, Clerk of the Court of Appeals for the State of Kentucky, do certify, that the foregoing pages contain a true and complete transcript of the record and proceedings therein mentioned, as fully as the same remains in my office. In testimony whereof, I have hereto set my hand, and affixed the seal of office, this 11th day of May, 1854.

J. SWIGUT, C. C. A.

"The answer of D. Wolff to a rule against him and others,
[231] produced and ordered to be filed," 27th of June, 1854.

[Answer of Wolff to Rule.]

And the said Daniel Wolff comes, and for answer to the rule exhibited against him by this Honorable Court, to show cause why he should not be attached for contempt for disobeying the injunction granted in this cause, comes, and for cause, shows that he

ought not to be attached, says, that from the time of making the order for an injunction in this case, up to and until the 29th of April, 1854, he did not, nor did any of his co-defendants run, or cause to be run, the steamboat Commodore, on the Ohio river, between the States of Ohio and Kentucky, for any purpose whatsoever. He further states, that on the 6th day of March, 1854, the Mayor of the City of Cincinnati, in the State of Ohio, a State bordering on the Ohio river, by virtue of a resolution passed by the City Council of the City of Cincinnati, on the 24th day of February, 1854, and which City Council had full power and authority so to do, said Mayor of the City of Cincinnati, by his license, under the seal of the City of Cincinnati, authorized and empowered, and licensed Wolff & Co., composed of this defendant, [232] Thomas Dadsworth, Ernst Klinschmidt, and Joseph Schenburg, Bernard Delmar, to establish a steam ferry across the Ohio river to be established at Dadsworth's landing, near the end of Lawrence street, in the City of Cincinnati, for the term of one year, from the 24th day of February, 1854; for which license this defendant and his associates paid the sum of five dollars into the City Treasury of the City of Cincinnati; and this defendant claims that by virtue of the compact between the States of Virginia and Kentucky, and by virtue of the Constitution of the State of Kentucky, and by virtue of the laws passed by the State of Ohio, the said City Council of the City of Cincinnati had full power and authority to grant said license, and that by virtue of said license, this defendant and his co-defendants became fully authorized and empowered to run said steamboat Commodore as a ferry-boat from Cincinnati to Newport, and there deliver the same. This defendant also claims, that by virtue of said license, so issued, as aforesaid, this defendant and his co-defendants have the right to receive on said steamboat Commodore, at the City of Newport, in the County of Campbell, and State of Kentucky, passengers and [233] freight, and the same to transport from said City of Newport, across the Ohio river to the City of Cincinnati, in the State of Ohio, and there deliver the said passengers and freight; and this defendant further states, that on the fourth day of January, in the year 1854, this defendant, and the other members of the firm of Wolff & Co., caused said steamboat Commodore, of which they are the owners, to be enrolled in conformity with the Act of Congress of the United States, entitled "An Act for enrolling and licensing ships or vessels, to be employed in the coasting trade and fisheries, and for regulating the same," and in which enrollment the dimensions of said boat, and the names of her owners are set forth, and that said owners are all citizens of the United States; and the said vessel being so enrolled, as aforesaid, at the Port of Cincinnati, in the State of Ohio, the owners of said boat, namely: Ernst F. Klinschmidt, Bernard Delmar, Joseph Schenburg, Thomas Dads-

worth, and Daniel Wolff, this defendant did afterwards, on the same fourth day of January, 1854, obtain a license from S. B. W. M'Lean, Surveyor of Customs at the Port of Cincinnati, and under his hand and seal whereby, and in pursuance of an Act of Congress [234] of the United States of America, entitled as above, license was granted for the said steamer Commodore to be employed in and carrying on the coasting trade of the United States for one year from the date thereof, which has not yet expired; and thereby this defendant insists that he and the other owners of said steamboat Commodore are fully authorized to run and navigate said steamboat Commodore on the Ohio river, between the States of Kentucky and Ohio, and to take and receive passengers and freight from the Ohio and Kentucky shores, and to transport and convey the same to the opposite shore, in said steamer Commodore, and that this Court has no jurisdiction or authority to restrain him and the other owners of said boat from so using her. This defendant denies, however, that he has ever willingly carried over any person or freight from the Kentucky shore to the City of Cincinnati, since the injunction was granted, for any compensation received, or agreed to be received; but this defendant admits he carried over his own individual property from Newport to Cincinnati, as he had [235] a good right to do. He further says, said Wolff & Co. owned said steamer Commodore until the 29th day of April, 1854, when they sold out all their right, title, and interest in said steamer Commodore, that is to say, this defendant sold and transferred his interest to John Christian Wolff, and the said Ernst Klinschmidt, Thomas Dadsworth, Joseph Schenburg, and Bernard Delmar, at the same time, sold and transferred their interest in said boat to John F. Boyd and George R. Fearons, and said boat was duly delivered to said purchasers, who have ever since been the sole owners, and in possession of said steamboat Commodore, and since which time this defendant and the other owners of said boat have never navigated said boat. This defendant and his co-defendants have never carried over any passengers from Newport to Cincinnati, voluntarily. Some few, against the remonstrances and desires of the owners and officers of said boat, have once or twice forced themselves on said boat, and rather than to force them into the river, and thereby endanger their lives, they have carried them over, but in no other way. This defendant and his co-owners have never, intentionally, disobeyed the order of the Court, nor has he ever [236] intended to treat this Court, or any of its orders, with contempt or disrespect; this defendant attaches hereto a copy of said resolution of the City Council of Cincinnati, and of the license granted by said Mayor of Cincinnati, also, a copy of said enrollment and license, from S. B. W. McLean, Surveyor of said Port of Cincinnati, and prays that they may be considered a part of this answer.

D. WOLFF.

[Resolution and License.]

The Resolution and License, referred to in the above answer, are as follows, viz:

"Resolved, by the City Council of the City of Cincinnati, that the prayer of Messrs. Wolff and others for a license to run a steam-ferry from the landing of Dadsworth, near the end of Lawrence street, in the City of Cincinnati, be granted, and that they pay into the City Treasury five dollars per annum for same."

I hereby certify that the foregoing is a correct copy of the Resolution passed by the City Council at their Session of February 24th, 1854.

[SEAL.] STEPHEN B. HULSE,
City Clerk.

STATE OF OHIO,
City of Cincinnati:

That Wolff & Co. having this day produced to me the Resolution [237] of the City Council of the city aforesaid, authorizing a steam ferry across the Ohio river, to be established at Dadsworth's landing, near the end of Lawrence street, upon the payment of the sum of five dollars into the City Treasury, which condition having been complied with, as appears by receipt: Now be it known, that I, David T. Snelbaker, Mayor of said City of Cincinnati, have this day granted unto Wolff & Co. license to establish a ferry, as above recited, for the term of one year from the 21st day of February, A. D. 1854; provided this license shall become null and void upon any violation of the Laws and Ordinances of the City of Cincinnati.

In testimony whereof, I have hereunto set my hand and affixed the Corporate Seal of the City of Cincinnati, this sixth day of March, A. D. 1854.

[SEAL.] DAVID T. SNELBAKER, Mayor.

THE STATE OF OHIO,
City of Cincinnati, } *ss.*

I, David T. Snelbaker, Mayor of the City of Cincinnati aforesaid, do hereby certify that the above and foregoing is a correct copy of the original license granted and issued to said Wolff & Co.

Witness my hand, and the seal of the City of Cincinnati, this 17th day of June, A. D. 1854.

[SEAL.] DAVID T. SNELBAKER,
Mayor.

The foregoing License was assigned to John C. Wolff, George R. [238] Fearons, and John F. Boyd, on the 3d day of May, 1854, and approved and transferred on the License Book the same day.

DAVID T. SNELBAKER, Mayor.

At a Court held for the Campbell Circuit on the 28th of June, 1854:

[Agreed Order.]

In consideration of the papers in this cause being very voluminous, and this being the last day of the Term, it is agreed between the Court and the parties in this cause, that the Court have time to consider; and that the decree rendered in vacation have the same effect as if rendered to-day, to all intents and purposes; and that either party have the same right to appeal as if the decree had been rendered in open Court; and the Clerk shall judge of the security in the bond, the penalty of which shall not exceed $2,500.

On the 2d day of August, 1854, the following decree was received in the Clerk's Office of the Campbell Circuit Court at Alexandria, and entered upon record agreeably to the above order, made on the 28th June, 1854, viz:

[Decree.]

This action coming on for final trial, upon the pleadings, exhib-
[239] its, and proofs, and the Court now being sufficiently advised doth adjudge and order, that the defendants, Peter Conway, John J. Simmons, John Sebree, Ernst Klinschmidt, Bernard Delmar, Joseph Schenburg, Thomas Dadsworth, and Daniel Wolff, be and they are, each and all of them, perpetually enjoined from landing the boat called in the pleadings and proof the "Commodore," or any other boat or vessel, upon that part of the Kentucky shore of the Ohio river lying between the lots of the City of Newport and the Ohio river, designated upon the plat of the Town of Newport as the "Esplanade," and including the whole open space so designated, for the purpose of receiving or landing either persons or property ferried from, or to be ferried to, the opposite shore of the Ohio river.

It being hereby adjudged against all the defendants to this action, that the entire privilege and franchise of ferrying persons and property to and from said part of the Kentucky shore of the Ohio river is in the plaintiffs alone; and it is hereby adjudged, that the receiving of persons, animals, carriages, wagons, carts, drays, or any other kind of vehicle, either loaded or empty, upon said boat or any other vessel at said part of the Kentucky shore, for the purpose of being transported and landed upon the opposite shore of the Ohio river;
[240] and the landing of persons, animals, and the kind of property above described, which had been received upon said boat or other vessel at or from the opposite shore of the Ohio river, and transported across said river, upon said part of the Kentucky shore, is an infringement of the ferry franchise of the plaintiffs, and is hereby perpetually enjoined; and this injunction shall extend to and embrace all persons claiming under the defendants to this action.

It is further adjudged, that Charles Daniel, the Master Commissioner, ascertain the amount of fees or compensation received by the defendants or either of them, or their agents, for transporting persons and property to and from said esplanade across the Ohio river; and, for the purpose of making such ascertainment, he may examine on oath any of the defendants that the plaintiffs may desire to be so examined, and hear such other proof as may be produced before him, touching the gross amount of compensation received for such transportation; and also ascertain the additional cost or expense which the plaintiffs or either of them would have been compelled to incur, to have transported the persons and property across the Ohio river [241] which the defendants or either of them did so transport, and report the same to this Court for final judgment upon the plaintiffs' fees and compensation.

It is also further adjudged, that the plaintiffs claim for wharfage and the counter-claim of the President and Common Council of the City of Newport against the plaintiffs, for the rents and profits of the ferry since 1836, and for a conveyance of the legal title of the esplanade, and for all other relief prayed for; and also the counter-claim of the defendants, Wolff and others, for damages, be and they are hereby finally dismissed. And it is also adjudged, that the defendants pay to the plaintiffs their costs herein expended, except the costs which may be incurred upon reference to the Commissioner above ordered, which will be decided upon when the Commissioner shall report.

This judgment is final as to all matters except that referred to the Master Commissioner, upon which this Court will adjudicate upon a report being returned.

Ordered that the rule herein, and further proceedings thereon, be [242] continued until the next term.

Plaintiffs' Depositions.

[Deposition of E. L. Pierce.]

The deposition of Elijah L. Pierce, taken on the 15th day of April, 1854, who deposeth, &c.:

Question by plaintiffs' counsel. Please to state how long and how well you have known the ferry between Newport and Cincinnati. State who has controlled and owned the ferry during the time you have known it, and state whether, or not, that ownership and control has extended to the entire frontage of the Town of Newport, on the Ohio river.

Answer. I have known it ever since 1806. I lived in Newport until 1816; crossed the ferry every week while I lived there, and oftener. General James Taylor always appeared to have the con-

trol of it, and I have always understood he was the owner of it. I have crossed at various times to Cincinnati, on Taylor's ferry, from every point of Newport on the Ohio river, clear on and up to the mouth of the creek above General Taylor's house, when the river was very high or the ice running. I used to get on the ferry-boat as high up as Taylor's house. The reason of going up so high, was to make a high landing on the other side; then the ferry-boat, by making her landing so high up on the other side, could cross over and make her landing better, above the mouth of Licking, on this side.

By same. Please to state, whether or not, you have, since 1816, [243] been in the habit of seeing the Newport ferry; and, if so, who has been in the possession and occupying of the same until now?

Ans. Yes, sir. I have seen it frequently; about once a week. Taylor or his lessees seem always to have been in possession, until now.

By same. Please state, whether or not, Taylor and his lessees have used the entire front of the Town of Newport, as a ferry landing during the time you have known it, according to his convenience.

Ans. They used every point on the Ohio river in front of the Town of Newport as a ferry-landing, as high up as the creek.

The defendants except to this question.

Question by defendants. When you speak of the ferry-boats starting from the upper part of the city at times of, or in high water, what sort of ferry-boats were used?

Ans. They used a skiff and a ferry-flat, worked by hands.

By same. Was not the customary place of landing then at the foot of York street, and did they ever leave it except in extraordinary occasions?

Ans. No, that was not the landing in early times; they usually landed near Mr. Daniel Mayo's, just above Licking river.

[244] By same. How long is it since you saw them land at any other place than where they now land?

Ans. I don't know that they have landed at any other place than where they now land, for some time.

By same. Have you ever known them to land at any other place since the steam ferry-boat has been running? Speak from your own personal knowledge.

Ans. I have got off the boat at another point than where she now lands.

By same. How often have you done so, and what occasioned it?

Ans. I can't tell how often, but it was occasioned by low water; it was at the foot of the first street below the factory, where we landed on those occasions.

By same. Did you land there within 12 months, 2 years, or how long ago is it?

Ans. I think, sir, if I am not mistaken, I landed there last summer, or certainly the summer before that.

By James Taylor. When you first came to Newport, state the width of the space of ground between the northern boundary of Front street and the Ohio river, at its ordinary stage?

Ans. It was a large space of ground in front; it was three hundred feet at Monmouth street, down at Jacob Fowler's; just above [245] the Garrison, I should think it was about one hundred and fifty feet; the bank in front of the Garrison was further out than where the present wall is; it was a bluff, steep bank; this is all, as well as I can remember. The first market-house that ever was built in Newport, was sitting out on the esplanade, and Front street run between that and the front of the lots on said street. It stood on what was called the esplanade ground, and was called public grounds, and that General Taylor had given it to the town as such, I understood.

By same. State who exercised acts of ownership over this public ground or esplanade, from the mouth of Licking to the eastern boundary of said line, in quarrying rock, and state from whom permission was had to quarry rock on this ground?

The defendants except to the above question.

Ans. General Taylor appeared to act the ownership of the quarry; people had to go to him to get the rock there; he gave the people of Newport the privilege to get what rock they wanted there. The Cincinnatians would go there to quarry rock, and when they had quarried it, he would send his teams there and haul it away himself.

By same. Was there ever any other ferry run on the ground in front of Newport, over Ohio river, from the period of your acquaint- [246] ance with it to the year 1853, except the one claimed by Taylor; if yea, state whose?

Ans. I don't know of any other.

By same. State who was running the ferry when you first knew it, and state the various ferrymen of the aforesaid ferry, and under whom they claimed at the time to run it?

Ans. When I first knew it, General Taylor's black man, Adam, was running the ferry—this was in 1806; a man by the name of Rugg run it awhile; two men by the name of Doxon run it; a man by the name of Massie run it. I have always understood they claimed to run it under General Taylor. Old man Doughty run it also.

By same. State what part of the public ground, in front of the Town of Newport, was used for a landing of this ferry, and whether said landing was not changed from time to time, owing to the stage of the water?

Defendants except to this question.

Ans. It was used from the mouth of Licking up to Taylor's run;

1457

sometimes one place and sometimes another, owing to the stage of the water.

By same. What is the extent of the space of ground at Monmouth and Saratoga streets, between the northern limit of Front street and the Ohio river, at its ordinary stage?

[247.] Ans. Pretty near half the lots between these streets are washed away. I don't believe the lots now are more than sixty or seventy feet deep.

By same. Do you know the true location of Front street, as laid down on the plat of said city in 1792, or 1795, and is that street now standing as originally laid down?

Ans. No, I don't know anything of the plat at all; the street is a part of it now standing, down about John Caldwell's a good part of it is washed off.

By same. How far, in the usual state of water, is it from John Caldwell's to the Ohio river, at this time?

Ans. I can't state how far it is to the river at this stage of water.

Cross-examined by defendants.

Do you not know that there is no stone-quarry in the esplanade, and is not the stone-quarry you refer to in the bed of the river, and covered with water the greater part of the year?

Ans. There is none in the esplanade, but it used to be dry on the beach, and there was the stone-quarry; it was right along the beach, up and down the river from Monmouth street to the point of Licking, and dry about 200 yards from the shore.

By same. Was not the whole of this quarry, at the ordinary stages of the river, always covered with water?

Ans. Yes, sir, it was; it was dry only in low water. I have seen [248] them quarrying there when the water was two feet deep.

By same. Is not this rock now always covered with the river?

Ans. Yes, sir; I have not seen it dry for a good many years.

By same. How long is it since you have known rock to be quarried there?

Ans. I have not known it since 1816, at which time I moved into the country.

By same. Who did you —— quarry rock besides your hands?

Ans. I saw Col. Tupmard, John Lindsey, David Perry, Daniel Mayo, old Mr. Lewis, and Mr. Daniel, quarrying rock there.

By same. For how many months in the year could they then usually quarry rock at this place?

Ans. I don't know that I could say, but it might have been two months, but at any rate, they quarried until the water would raise so that they couldn't work.

By same. Did not all who choose, of the citizens of Newport, go there and quarry. Do you know of any person but yourself getting permission of General Taylor?

Ans. I went to him myself, and he told me to take what I wanted;

it was the impression among the people of Newport, that the rock was his; he said the people of Newport might have what rock they [249] wanted for their own use, but he would not let anybody quarry rock to take over the river. I don't know of any person getting permission of him but myself. I know that Jim Smith quarried rock to take over the river, but General Taylor stopped him; this was in 1802 or 1803.

By same. Do you know of General Taylor ever quarrying any rock there, or exercising any other control over the quarry, but the single act of stopping Jim Smith and taking his rock?

Ans. I don't recollect of seeing Gen'l Taylor or his black man quarrying rock there; I have seen his men often hauling away.

By same. What do you consider Front street? where did it lie, and how far down did it extend?

Ans. It extended from Monmouth st. down to the front of the Garrison; I sh'd think it ought to be sixty feet wide; take that sixty feet off and there was plenty ground between that and the river for an esplanade.

By same. I did not wish to know how wide it ought to be, but how wide it really was. What was regarded by the people as Front street? did it lie next to the lots? and how wide was it then regarded to be?

Ans. There was a large space of ground between the houses and the river—you may call it a street, esplanade, or what you choose; [250] I don't know what the width of the streets in the city was, and further this deponent saith not.

ELIJAH L. PIERCE.

[Deposition of Sam'l Carter.]

The deposition of Samuel Carter, taken on the 9th May, 1854, who deposeth, &c:

Question by pl'ff. State how old you are, where you reside, and how long you have resided in Campbell county?

Ans. I was born on the 16th day of July, 1792, as my parents tell me; I reside in Campbell county, Kentucky, about 2 miles from Newport; I came to Newport on the 9th day of April, 1816, and have resided in Campbell county ever since.

By same. State when you became acquainted with the ferry across the Ohio river at Newport, who run said ferry at that time, and by whom it has been run ever since?

Ans. On the 9th day of April, 1816, I was first in Newport; I crossed the ferry three times that day from Cincinnati to Newport, and from Newport back to Cincinnati on that day; I can't tell who owned the ferry-boat I crossed on; I can't tell who run the ferry-boat on that day; I believe the ferry from Newport to Cincinnati since that day has been run by Gen'l James Taylor, until his death, and by his heirs ever since to this day.

By same. State as near as you can the extent and width of the space of ground, between Front street and Ohio river, running up from Licking river to East Row, known and designated as the "esplanade or common?" and state all you know of the claim and acts of ownership exercised by Gen'l James Taylor, over said esplanade or common, from Licking to East Row?

Ans. When I first came to Newport from Monmouth street down to York, I think it must have been one hundred feet at least from York to the point of Licking; it was not so wide at that time. It has continued to wash away until, at the present time, it is very small; I know not the exact width from Monmouth street to East Row; there was considerable land up on the bank since my first knowledge of Newport; I have often heard Gen'l James Taylor say, that all the land between Front street and low-water mark on the Ohio river was his, with the exception that he could not build on it or abstract it; that it was to remain open for the citizens of Newport to pass over it forever; nevertheless, he said he owned the fee simple, if there should be any gold mines or any other mines, marble, or anything in the land, it was his. In the fall of 1819, the Ohio river was very low; there was a great many loads quarried in the bed of the Ohio river, out to low-water mark; James Taylor claimed the whole privilege to them, but gave the citizens [252] of Newport full privilege to get what they could, saying it would be a benefit to the Town of Newport, but refused anybody coming from Cincinnati the privilege of getting any. Some years ago J. H. McClure went to digging soil outside, between Front street and the top of the bank; Gen'l Taylor came out and forbid him, Taylor claiming that soil to be his, and they had a great quarrel about it; I don't know how it ended.

By same. Will you state whether you have known of any other ferry having been run across the Ohio river, from the esplanade, except Taylor's and those under him, until the running of the Commodore? State also from what points said Taylor and his lessees run the said ferry.

Ans. I don't remember of any; I have no recollection of any other; when I came to Newport, or soon after, it was generally run by his negroes, and was generally kept from the mouth of Licking up to Columbia street, at all points between those points by the skiffs and the flats at different points on dug roads; they then began to draw it up towards York street, after Capt. Massie got the ferry; I think he established the first point that appeared to be permanent. [253] Before that they ferried from almost any place to suit Gen'l Taylor's negroes; the permanent point spoken above was at York street, at the upper edge of said street; I have known the ferry kept at Monmouth street, also at East Row; I have, during my residence in Campbell county, been ferried in skiff from almost every point between the mouth of Licking and Monmouth street. Thirty

odd years ago, when wanting to cross the river, I would go to the bank and look to see where the skiffs were, as sometimes they were in one place and sometimes in another.

By same. Under whom did Massie run the ferry, and under whom did the two Doxon's run it?

Ans. I believe under Gen'l James Taylor—that was the understanding; I never heard it disputed.

By same. Will you state who succeeded John Doxon, and who is engaged in running said ferry now?

Ans. I believe Robert Air succeeded John Doxon, and I believe Robert Air is now running the ferry-boat.

By same. State what sort of boats are run by Air, how many are kept running, and what are the accommodations for said ferry?

Ans. Steamboats; so far as my knowledge extends, in day time, two boats are running; I know nothing about the boats that are running in the night time; so far as I am concerned, I have never [254] found fault with Robert Air; I believe that it is the best accommodations of any ferry that I was ever in the habit of crossing.

By same. State if you remember an old market-house which stood on the esplanade; if yea, state how long it has been destroyed or blown down?

Ans. I remember it well, and remember the first market that ever was in it; about it being blown down I am at a loss for dates, but I think it was in 1821, 1822, or 1823.

By same. State whether its use for a market-house had been, or not, abandoned for some time before it blew down; and whether, and how long previous to its destruction was it used as a market-house?

Ans. It had been abandoned as a market-house for some time before it blew down, but I can't say how long; we, neighbors, considered it a nuisance, and were glad when it did blow down; hogs and cattle occupied it.

By same. State if you know under whom McClure and Doughty run said ferry.

Ans. I don't know of McClure's running the ferry; I understood that Doughty run it under Gen'l Taylor.

Cross-questioned by def'ts. State what you know of ferries being [255] run from the Ohio side of the Ohio river by persons other than Taylor or his agents and lessees, and landing on the esplanade in Newport some years ago.

Ans. I know a man by the name of Herbert, and a man by the name of Smith, that run the ferry from near the mouth of Broadway to Newport; then afterwards old man Farren from near Ludlow street to Newport; I think those are all that I recollect of, except those that were connected with Taylor.

By same. How long did they continue to run? Where did they land in Newport?

Ans. I can't tell how long; they were like Taylor's ferry landing at any point they could strike.

By same. State whether the strip of ground or esplanade between the lots and the Ohio river, or the whole part of the town, has been used as a public landing for steamboats, flat-boats, rafts, and all kinds of water craft. Since your knowledge of it, what other uses has that ground been put to?

Ans. It was at an early day; I have landed many a flat-boat there for the last twelve years; I know nothing about the boats; no other use has been made of it, that I have any recollection of, except the old market shed.

By same. Have the Trustees of the Town of Newport made improvements of any part of the esplanade, or any part of the [256] front of the town, from the mouth of Licking to East Row street, by grading, filling, paving, piling, stone walls, or otherwise? State when and where.

Ans. About thirteen or sixteen years ago, I was then a Trustee of the Town of Newport. Newport then graded and paved; Monmouth street; more than that improvement I know nothing of to my certain knowledge. I understood that the town did make improvements afterwards.

By same. What part of Monmouth street do you refer to?

Ans. From Front street down to the river, we began from the north line of Front street.

By same. Are you familiar with the plats of the Town of Newport?

Ans. I am not.

By same. What was the population of Newport when you first knew it, and has there been any increase since? if so, how much? State, also, what you know of the increase of population in the country adjacent to and back of Newport.

Ans. When I first came to Newport the population was about 500; it has been increased since. I should judge the population is now about 8,000; when I first knew the country adjacent to and back of Newport the population was very thin—the increase has been very large since, and in my neighborhood the population is quite dense.

[257] By same. Where does the greater part of the commerce and trade of the people above mentioned concentrate?

Ans. In Newport and Cincinnati. The most of the produce that I have raised, I have sold in Cincinnati. I sold my hay and potatoes this year in Newport.

By same. Where do the people cross themselves, their live-stock, &c., in going to and returning from Cincinnati? State, also, whether horses, mules, cattle, hogs, and other things taken from the State of Ohio to the State of Kentucky, and from Kentucky

to Ohio, are crossed over the Ohio river between Newport and Cincinnati, and to what extent the crossing is done?

Ans. I believe they cross on Captain Air's ferry-boat, from York street, in Newport, to Lawrence street, in Cincinnati, and *vice versa*. Horses, mules, &c., are crossed from the State of Ohio to the State of Kentucky, both ways. Except Campbell county, I don't think the crossing is large; that is large.

By same. When you spoke of the ferry accommodations of Robert Air, did you mean the present ferry accommodations, as improved or existing heretofore?

Ans. Ever since Robert Air has been ferryman, I have been well pleased with his accommodations, but, latterly, they have improved very much.

[258] By same. When have you been ferried from East Row street, and how often? Have you, in fact, ever been ferried from the improved landing at East Row? Was it not a bar some distance out from the improvement?

Ans. A very few years since I was ferried from East Row several times, when the water in the river was low. It was always a bar where I was ferried over from there.

Were you in fact ferried from the improved landing, at the foot of East Row street, or did the ferry-boat land at a bar a considerable distance out? State how far out the bar was.

Ans. It was some considerable distance from the pavement at East Row; there was plank and other things laid across when there was water, for us to reach the platform where the boat landed; the bar, I suppose, when the boat landed, must have been at least 200 feet from the pavement.

By same. What has been the regular point of landing the ferry-boats for the past twenty or thirty years?

Ans. I think for the last twenty years the regular has been at York street.

By same. How long since you have resided in Newport?

[259] Ans. About twelve years.

SAMUEL CARTER.

[Deposition of H. H. Mayo.]

The deposition of H. H. Mayo, taken on the 9th of May, 1854, who deposeth and says:

Question by plaintiff's attorney. Please state how old you are, where you were born, where you have resided, and whether you have ever seen a market-house on the esplanade, in front of Newport?

Ans. I am forty-four years old last January; I was born in Newport, Kentucky; I have never resided out of the County of Campbell; I have no recollection of a market-house being on the esplanade spoken of.

By same. Who has exercised acts of ownership over the esplanade spoken of, in running a ferry across the Ohio river, from Newport to Cincinnati?

Ans. General Taylor and his heirs have exercised acts of ownership ever since my recollection, over the esplanade and running the ferry.

By same. Please state whether you did not, some years since, make a lease of a portion of the esplanade of the City of Newport; when it was made, how long you kept it, and why you gave it up?

Ans. Some five or six years ago, Mr. Ross and myself obtained a lease from the Council of Newport, for that part of the esplanade, of the City of Newport, between York and Columbia street; [260] they leased it to us for the term of fifty years; we had to improve the esplanade, and we had seven years to make the improvements; by the terms of the lease we were required to give security in the penalty of five hundred dollars; we have done nothing with the improvement; the lease is still in force, it has never been surrendered to the Council, and we still hold the lease.

By same. Are you now in possession of the esplanade, under said lease, and have you made the improvement stipulated and contracted for in said lease? If not, why did you not take possession of said esplanade?

Ans. Mr. Ross and myself hold the lease, and we have never exercised acts of ownership over the esplanade; we have not made the improvements stipulated in the lease; nothing has been done with it at all; the reason of this is, the esplanade has been in litigation between General Taylor and the town, and in consequence of this litigation, we concluded to do nothing with it. The lease has been nothing more than a blank piece of paper to us; we considered that we had a right to go on and make the improvements stipulated in the lease, if we choose to run the risk.

[261] By same. About the time the lease was about being executed, did you not apply to General Taylor, and inquire as to the character of his claim to the esplanade? and if so, state what then took place.

Ans. After the Council gave us permission, I went up to Colonel Taylor's, and spoke to him on the subject of the lease; told him that the Council had granted Mr. Ross and myself a lease to the esplanade, and inquired of him if he would set up any claim to the wharfage, if we should go on and make the improvement; his answer was, that he would claim the wharfage, that the town had no right to the property; and that, I suppose, was the reason we did not go on and make the improvement.

The defendants object to that part of the foregoing answer going down as evidence, which speaks of what Colonel Taylor, one of the plaintiffs in this suit, said in reply to the question of witness.

Objection overruled.

By same. What induced Ross, or yourself, to go to Taylor to make inquiry touching the esplanade?

Ans. I understood that they set up a claim to the esplanade, and I had heard that they would probably object.

By same. Is the steamer Commodore now running as a ferry-boat? and if so, from what points?

[262] Ans. She is now running from the foot of Monmouth street.

By same. Do you know the price of ferriage charged by the Commodore? and state if any difference exists between the charges of Air and the proprietors of the Commodore.

Ans. I don't know what the Commodore is charging for ferriage. I don't know what is the difference of the charges for ferriage on the different boats.

Cross-examined by def'ts' att'y. State whether the esplanade and whole front of the Town of Newport has been used as a public landing for steamboats, flat-boats, &c., rafts, &c. State how long it has been used as such.

Ans. It has been so used ever since my recollection, except where the ferry-boats landed.

By same. State what improvements have been made by the trustees of the town on the esplanade or front of the town by paving, grading, macadamizing, piling, walls, &c. State also what part of the esplanade has been improved.

Ans. There have been four stone wharves at the foot of Columbia, York, Monmouth, and East Row streets built, which has been done by the city and private subscription; there has been some piling done between Columbia and Garrison wall, which was done by city and private subscription; and between Monmouth and York, piling has also been done by the same means, the square was [263] graded and paved, between Columbia and Cabot, and nearly finished when the flood of 1847 came and washed it away; the city did this work; Scott got judgment against the city for this work, and the city had it to pay.

By same. Were those improvements above-mentioned done under the supervision of the town authorities of Newport, and what proportion of the expense was paid by the town?

Ans. Yes, sir; the first improvements were, and there has been some repairing done to York street, this repairing was done by Col. Taylor himself; the town paid the greater portion of the expense on the wharves.

By same. You have said, that Gen'l Taylor claimed and contended that the fee of the esplanade was in him, but the city had a right to use it as a common?

By same. Why did you take the lease for the part of the esplanade between the York street and Columbia street wharves, from the Town of Newport, and bind yourself in the penalty of $500 to [264] make the improvement in 7 years, if you considered at

that time that Gen'l Taylor, or his heirs, had claim to the same ground?

Ans. Until after we had taken the lease I did'nt know thal Col. Taylor would set up any claim to the wharfage; after that I understood that he would, and then went to see him about it.

By same. State what you know of ferries other than Taylor's being run from the Ohio side of the Ohio river to the Kentucky side, and landing on the esplanade in Newport?

Ans. I refer to Samuel Carter's answer in his deposition on this subject, and adopt it as my own.

By same. What length of time did those ferries continue to run?

Ans. For several years.

By same. State whether the amount of commerce and crossing of persons between Newport in Ky., and Cincinnati, in Ohio, is great or small?

Ans. It is very great; there is a great deal of crossing.

By same. State whether the steamer Commodore was engaged in that commerce and carrying trade at and before the commencement of this suit?

Ans. Yes, sir; she was.

By same. Did she land at regular improved landings on each side of the Ohio river?

[265] Ans. Yes, sir.

By same. Who is now running the Commodore?

Ans. I have understood that John F. Boyd and J. R. Fearons have purchased her, and are running her.

By same. Do you know whether James M. Doxon ever officiated on the ferry-boat from Newport to Cincinnati?

Ans. Yes, sir; he did when his father run the ferry.

By same. Is James N. Doxon now living?

Ans. No, sir.

By same. State what you know of the town authorities exercising acts of ownership over the esplanade, and how long you have known of such acts by collecting wharfage, &c.?

Ans. Several years ago, say about the year 1840, the trustees passed an ordinance to collect wharfage, which they did for a short time, then it was abandoned, and the wharfage was not again collected until some time within the last year.

By same. Have you ever known of any other person but the Town of Newport collecting wharfage there?

Ans. No, sir; I have not.

By same. State whether you have lived near the esplanade, and been familiar with the landing and the business transacted in and about the same; and if so, how far back in point of time?

[266] Ans. I was born right on the bank of the river Ohio, on Front street, in Newport, and of course I saw everything that was going on there for years.

H. H. MAYO.

[Deposition of S. B. Munson.]

The deposition of Samuel B. Munson, taken on the 9th May, 1854, who deposeth, &c.:

Question by pl'ffs' att'y. State your occupation and residence?

Ans. I am an engraver of the late firm of Doolittle & Munson; I reside in Cincinnati.

By same. State how long you have been engaged in engraving, and what species of engraving, and your familiarity and knowledge touching plats and other drawings.

Ans. I have been engaged in engraving for some thirty years, in all kinds of engraving, including maps, &c.; I have been familiar with that branch of business.

By same. State whether it is or is not possible for an experienced practical engraver to detect any changes and alterations made in very ancient plats or drawings, and state the means and mode of detecting and exposing such alterations.

Ans. I think it possible to detect any alterations or changes in [267] ancient drawings; the means of detecting such changes is by the eye and glass.

By same. Please look upon the old plat of the City of Newport now before you, marked XXX. State whether you have critically examined it, and give us your opinion as to whether the black line nearest to the shading of the Ohio river, and designating it and parallel with it, was, at the time of making said plat, a continuous or broken line, and the grounds of that opinion.

Ans. I have critically examined the line referred to on the map A, A, and I am of the opinion that it was made a continuous line at the time the plat was made. The reason for arriving at this conclusion is this, it is extremely difficult to make a new line or mark look like an old one and match exactly.

By same. State whether the plat exhibited and referred to is not a very ancient map or plat, and whether you have any doubt of the original continuity of the line A, A, designated. State your opinion of the probable age of said plat, if you can do so.

Ans. Yes, sir; it is to all appearances a very ancient map; I have [268] no doubt as to the original continuity of the line A, A, designated; I would say it was 30, 40, or 60 years old.

Cross-examined by def'ts. How many squares does the line you speak of, front?

Ans. Three squares.

By same. What is the condition of the paper as to its state of preservation?

Ans. It is not in very good condition.

By same. Are you sufficiently acquainted with the business of making plats, drawings, &c., to say positively whether it is possible for an old line to be closely imitated by a line recently made?

Ans. I am sufficiently acquainted with the business of making

maps, plats, &c., to say positively that it is almost impossible for an old line to be closely imitated by a line recently made.

By same. State where you reside?

Ans. I reside in Cincinnati, Ohio.

By same. State whether that plat referred to by you is a private paper claimed by the pl'ff, Taylor, or do you know it to be a public document?

Ans. No; I don't know that it is either one or the other.

SAM'L B. MUNSON.

[Deposition of E. B. Bartlett.]

The deposition of E. B. Bartlett, taken on the 9th of May, 1854, who deposeth, &c.:

Question by pl'ffs' att'y. State what office you now hold and have [269] held for the last four years, what you know of the paper XXX, purporting to be the original plat of the Town of Newport, dated 1792, and referred to by the last witness, and in whose possession said plat has been, and how said possession was obtained?

Ans. I am Clerk of the Kenton Circuit Court, in the State of Kentucky, and have been for the last four years and over. The paper marked XXX, now before me, purporting to be a plat of Newport, was filed in my office by Colonel James Taylor, in the case of James Taylor and others against the City of Newport, on Writ of Error, which was brought by change of venire from Campbell County to the County of Kenton, and, as my recollection now serves me, in obedience to a notice served on Colonel Taylor to produce and file the plat. A copy of the notice now before me, in the handwriting of Mr. Webster. The plat was filed in my office in the year 1850, and has been in my possession ever since, until the month of March last, when it was withdrawn by Colonel James Taylor, leave of the Court having been given him for that purpose. Colonel James Taylor produced the plat in Court, and the Judge of the Court directed it to be placed in my custody. When the plat was withdrawn I made no copy; I think I made a copy for the Court of Appeals, but made no copy since. The copy of notice referred to above is filed herewith, and marked W W.

[270] And further saith not.

E. B. BARTLETT.

The copy of notice referred to in the foregoing deposition as Exhibit W W, is as follows, viz:

JAMES TAYLOR, Esq.

SIR:—Take notice, that on the trial of the Writ of Error pending in the Campbell Circuit Court, on the day of our present July Term, and which is prosecuted by yourself, Horatio T. Harris and Keturah L. Harris, George T. Williamson and Jane M.

Williamson, John W. Tibbatts and Ann W. Tibbatts, to reverse the order of the Campbell County Court, granting a license to the President and Common Council of the City of Newport, to establish and run a ferry from the public ground fronting the City of Newport across the Ohio river to Cincinnati, which order was made at the February Term, 1850. You will be required to produce in open Court, to be read and used as evidence on behalf of the defendants in error, the original plat of the Town of Newport, bearing in inscription, signed by Hubbard Taylor, and dated 14th of February, 1792, and attested by William Ford, Nathan Kelley, James Eubank, Edward Collins, and William Proctor; and also a written statement thereon of the conditions of the sale of the lots, and also the record [271] of the proceedings of the Board of Trustees of the Town of Newport, from the year 1795 until the year , and all other public books and papers in your possession or control concerning the said Town of Newport; and which plat, record, &c., are in your possession, and beyond the control of the defendants in error.

The President and Common Council
of the City of Newport, by
ROOT & WEBSTER,
MOOAR & WALL,
KINCAID & BENTON, and
W. K. WALL,
Attorneys.

NEWPORT, July 6th, 1850.

[Deposition of T. G. Tupman.]

The deposition of Thomas G. Tupman, taken on the 9th of May, 1854, who deposeth, &c.:

Question by plaintiffs' attorney. State when you came to Kentucky, where you settled, and how long you remained at Newport?

Answer. I came to Kentucky in 1817. I settled in Newport; I remained in Newport about 8 years.

By same. Where did you then reside, and have you lived there ever since?

Ans. I removed to Dry creek, in Kenton county, and have lived there ever since.

By same. State the width of the esplanade, or space of ground, between the northern of front and the Ohio river, running from mouth of Licking river to East Row. State who exercised acts of ownership over it; in what way, and your opportunities of knowing.

Ans. I couldn't say what was the width originally; it has washed [272] away very much since I have known it. General James Taylor exercised acts of ownership over it, by keeping a ferry there.

I lived with General Taylor, and was in his employ about eight years.

By same. State what you know about General Taylor not permitting trespasses to be made on the esplanade, and whether he did, or not, forbid any persons but his neighbors and citizens of Newport from quarrying stone.

[Exception by defendants to the question.]

Ans. I know that he did not permit trespasses on this esplanade, and I was employed there to keep trespassers off. He always permitted citizens of the Town of Newport to quarry what stone they wanted. He forbid strangers from quarrying stone there; he also forbid citizens of Cincinnati and Ohio from quarrying stone there.

By same. Have you known of any other ferry having been run on the esplanade, except that run by Taylor? If so, by whom?

Ans. I have not known of any other ferry running there; I have heard, very lately, of a steam-boat, called the Commodore, running there.

By same. State also whether, while in the employment of General Taylor, what you did to prevent trespasses on the esplanade?

Ans. There were some trespassers come there to get stone; I or- [273] dered them away, and they generally left without any trouble. Once or twice they came to get stone in front of the town, and they left when I ordered them away.

By same. Were you acquainted with Massie? and under whom did he run the ferry?

Ans. I was well acquainted with John Massie; he ran the ferry under General Taylor.

By same. Were you acquainted with Hubbard Taylor, the brother of General James Taylor? and if yea, state if he is dead or alive, and when he died.

Ans. I was acquainted with him. Yes, sir, he is dead, some ten or fifteen years.

By same. State under whom Doughty McClure and the two Dixons and Walls run said ferry. State the length of possession of said ferry by James Taylor, and whether said possession was interrupted or continuous, and how James Taylor claimed said ferry?

Ans. They run the said ferry under James Taylor. It is about thirty-seven years since I have known General Taylor to have possession of said ferry. I know of no interruption in his possession. I have understood he claimed from his father.

By same. Did he claim that his father had any interest in it? or [274] did he claim it as his own? And when did the claim commence?

Ans. No, sir. I never understood that his father had any interest in it; but he claimed it as his own. I don't know when the claim commenced.

By same. Did you know Samuel Winston and Isaac Wilson? and did they, or not, give evidence in the cause of the Trustees of Newport against Taylor for this ferry, in 1829 or 1830? And state whether said Winston or Williams are dead or alive.

Ans. I did know said Winston and Wilson. I have understood they did give evidence, as stated above. They are both dead.

[Cross-examined by defendants.]

State whether any ferries were run by persons other than General James Taylor, or any of his lessees or agents; and whether they used the esplanade as a place of landing.

Ans. I know that some persons did, for a little while, run a ferry from Cincinnati to Newport, and landed at the esplanade, but they took no passengers from Newport back to Cincinnati.

And further saith not.

THOS. G. TUPMAN.

[Deposition of G. W. Doxon.]

The deposition of George W. Doxon, taken on the 10th of May, 1854, who deposeth, &c.:

Question by plaintiff. Did you reside in the Town of Newport, [275] Kentucky? If so, state when you first went to reside there.

Answer. I became a citizen of Newport in October, 1826, and continued to reside there until October, 1841.

By same. Who was running the ferry from Newport to the City of Cincinnati, when you first moved to Newport?

Ans. At that time Captain John Massey was running said ferry boat.

By same. Under whom was he running said ferry? and how long did he run the same?

Ans. He rented the ferry from Gen. James Taylor, and run it until the spring of 1829.

By same. Who succeeded Massey in running said ferry, and under who was it run?

Ans. William Wall and Charles M. Doughty. They run it under a lease from Gen. James Taylor, until the spring of 1831.

By same. Who run the said ferry from the year 1831 to the year 1841, and under whom was it run?

Ans. I run said ferry from the spring of 1831 until July, 1836. I took the ferry from Wall and Doughty, and paid to Gen. Taylor the rent. In July, 1836, I sold out the ferry privilege, boat, &c., to Wetmore, but Gen. Taylor still held me responsible for the rent, during my lease. I think, in the fall of 1837, I was compelled to [276] take back the ferry from Wetmore, in consequence of his failure to comply with the contract with me. From the time I took it back,

in 1837, my brother, who then became a partner with me, and myself, run the ferry until February, 1841.

By same. Under whom did Walls, Doughty, and Wetmore run said ferry?

Ans. Wall and Doughty run the ferry under Gen. Taylor, and Wetmore run it under my lease from Gen. Taylor.

By same. What was the extent of your lease in front of the Town of Newport or the esplanade, and what landings did you use for your boats?

Ans. My ferry privilege was from the mouth of Licking up to a creek, then called Taylor's gut; I suppose, a distance of about a mile. I considered that I had the exclusive right to the ferry privilege at Newport, and I frequently stopped a black man from taking persons across the river in a skiff, above the mouth of the creek. I used those points of landing which were most convenient, at the time, depending upon the stage of the river. Generally I used the foot of York street, sometimes Monmouth street, and the factory landing, and sometimes I landed between the streets.

By same. During the time you run the ferry, as lessee of Gen. Taylor, was there any other ferry run by any one, from the Town of [277] Newport to the City of Cincinnati?

Ans. At *one*, during my lease of the ferry, the ferry on the opposite side of the river commenced taking persons across the river from Newport to Cincinnati. I enjoined their proceedings, and took their boats; the Sheriff of Campbell attempted to arrest the ferryman, who jumped into the river and swam back to the other side. There was no other ferry run, during my lease, between Newport and Cincinnati, except the one run by me.

By same. During the time you run the ferry under Taylor, was there any wharfage collected from the esplanade, or common, in front of the town on the river, by any one? If there was any, who collected the same?

Ans. I do not recollect of any wharfage being collected while I run the ferry. I think I had the privilege of collecting the wharfage, if there was any to be collected. I claimed the right to the wharfage, as I had the whole privilege of the ferry and landing in front of the town. If any person wished to land they applied to me for the privilege of doing so. Sometimes boats landed before they saw me, and, if they were in my way, of course I required them to remove their boats.

[278] By same. Who was in possession of the esplanade and landings, during the time you run said ferry under Taylor?

Ans. I always understood that Gen. Taylor owned the esplanade and ferry, and I paid him the rent. I never heard any other person assert any claim to it.

By same. While you run the ferry, who exercised control over the esplanade and different landings on Newport shore?

Ans. I had control of the ferry and exercised the ferry privilege. Gen. Taylor owned them. I had control over the landing; I never had anything to do with the esplanade, which I considered the top of the river bank. So far as the privilege of the ferry was concerned, I had the entire control and use of it, and I considered I had a right, under my lease, to the wharfage.

By same. Did you use other streets besides York street, at any time, to land your boats? If so, what streets?

Ans. I used Monmouth street, and what was called the factory landing, and, generally, as before stated, the foot of York street.

By same. During the time you run the ferry, did any persons ever apply to you for privilege to land their boats at different landings in front of said town?

Ans. They have asked me frequently for the privilege of landing [279] at my ferry landing, which I always granted when I could do so without inconveniencing myself. I claimed all the landings, under my lease, from the mouth of Licking to the creek before mentioned.

By same. During the time you run the ferry, who claimed the stone-quarries in front of the town on the river?

Ans. Gen. Taylor claimed the stone-quarry when the river was low; application was frequently made to me for the privilege of getting stone from the quarry. I told them that I had nothing to do with the quarry, that they must apply to Gen. Taylor; and I had seen persons getting stone from the quarry. This quarry was situated along the edge of the river, from Columbia street to the mouth of Licking, and, in low water, could be used for getting stone. The quarry was below York street, the regular ferry landing.

By same. Did you ever know any one to quarry rock out of said quarry, except by permission of Gen. Taylor?

Ans. I did not.

By same. Who succeeded you in running said ferry, and under whom was it run?

Ans. John Doxon succeeded me, and run it under Gen. Taylor.

By same. What do you know about Gen. Taylor having subscribed money to improve the streets which were extended to the river?

[280] Ans. Gen. Taylor subscribed money for the improvement of York street, through me, and I paid his subscription and took it out of the rent of the ferry. I don't recollect the amount.

By same. During the time you run the ferry, did the trustees of the Town of Newport attempt to exercise any control over you or the landings from which you run your ferry-boats?

Ans. Not that I recollect of, in any way whatever.

Cross-examined by defendants' attorney. Who made the improvements of the streets, through the esplanade, to which Gen. Taylor made the subscriptions?

Ans. I think it was done in part by the trustees of the town, and in part by private subscriptions.

By same. Was the lease you speak of from Gen. Taylor to yourself, a written or verbal lease of the ferry privilege?

Ans. All the leases I had were written leases.

By same. Where are they or any of them, now?

Ans. I saw one to-day in the hands of James Taylor. I may have a copy of one, but of that I am not certain. Gen. Taylor kept the leases generally, and I am unable to say where they now are.

By same. How long since you have read the leases, or any of them?

[281] Ans. Not since the leases were drawn.

By same. Do you state it as a fact, expressed in the leases, that you had a right to collect wharfage on the esplanade in Newport, for your own emolument, or do you state it merely as a matter of opinion?

Ans. I can't state, as a matter-of-fact, that I was entitled to collect the wharfage for my own benefit; it is merely my opinion I was. I have just been shown, by James Taylor, two of said leases: one dated May 1, 1835, and the other dated Nov. 12, 1838, which are herewith filed as a part of my deposition, and to which I refer as showing the terms of the contract between Gen. Taylor and myself, marked No. 51 and No. 100.

By same. You have said that Gen. Taylor exercised control over the landings at Newport; state how he exercised control; by what acts or means.

Ans. By owning and leasing the ferry-privilege there for several years.

By same. How do you know he owned the ferry-privilege there?

Ans. By being so informed by General Taylor himself, and by every other person who knew anything about it.

By same. Did you ever collect wharfage from any person at Newport?

Ans. I do not recollect whether I ever did, or not. I may have done so.

[282] By same. Was there a ferry from the Ohio side of the Ohio river to the Newport side while you run the ferry from the Newport side?

Ans. There was.

By same. Who run that ferry, and was it connected with General Taylor's ferry from the Kentucky shore, or was it a different establishment?

Ans. That ferry was run by Charles P. Ferrin, and had no communications with the ferry from the Kentucky shore, until I leased from Ferrin his ferry-landing, and I thus became the lessee of the landings on both sides of the river.

By same. Did any person else run a ferry from the Ohio side, and land at Newport, during your knowledge of the ferry? If so, state who.

Ans. James Wall run a ferry from the Ohio side to Newport during a part of the time: I run a ferry from the Newport side.

By same. Did any other person run a ferry from the Ohio side, as above?

Ans. I do not recollect of any other person except Wetmore and Wall, after I sold out to Wetmore.

By same. Where did the ferries from the Ohio side land their boats on the Kentucky side? State the point or points.

Ans. The ferryman from the Ohio side generally used skiffs, and landed wherever they could find a convenient point on the Kentucky [283] side, sometimes at my landing when my boat was not there, and sometimes at the foot of Columbia street.

By same. Had you any license from the Ohio side of the river, until you leased from Fearon his landing?

Ans. The person from whom I rented on the Ohio side, furnished the license. I think I rented from Wall his landing on the Ohio side, before I rented Ferrin's landing. They furnished the license on the Ohio side.

By same. State whether you ever run an independent ferry from the Ohio side to Newport, when you was not running under Taylor?

Ans. I think I run a ferry for a few days from the Ohio side to Newport, and then became entitled to Taylor's privilege, and run under a lease from him. The manner in which this happened was in this way. A man by the name of Hayman had outbid me for Taylor's privilege, and got a lease from Taylor. I then got a boat and run it for a few days, independent of Taylor's lessee, and Hayman then relinquished his lease from Taylor to me, and I continued to run under that lease. While I was running an independent ferry, as above stated, I had a ferry license on the Ohio side, but none on the Newport side.

[284] By same. State whether you run that independent ferry as an opposition to Taylor's ferry?

Ans. I was running at that time in opposition to Rugg & Hayman, who were lessees of Taylor's ferry.

By same. What year was that?

Ans. I can't state what year it was.

By same. Had you been running the ferry as lessee of Taylor before that occurred?

Ans. I think it was at the expiration of the lease made by Taylor to Wall & Doughty, of which lease I became the assignee.

By same. State whether boats, rafts, and water-crafts were in the habit of landing on the strip of ground between the lots and the river, at any and all points not previously occupied by the ferry-boat, while you run the ferry there?

Ans. Yes, sir. Rafts, coal-boats, and trading-boats, and flat-boats, were in the habit of landing at any point they could make a landing, except at the ferry-landing. If they did at any time land at the ferry-landing, they had to remove out of the way when I wanted to land.

By same. Did you claim and exercise the right to control the landings in Newport, and to prevent boats, rafts, and water-crafts, [285] from landing, except as you might direct, unless it was at the landing occupied by the ferry at the time being?

Ans. No, I did not, except opposition ferry-boats. I did not prevent any other boats from landing at points not used by me as a ferry-landing, except opposition ferry-boats.

By same. When you say you sent persons to General Taylor to get permission to quarry rock, did you go with them to General Taylor?

Ans. No. I would send them, when they would make application to me.

By same. If you did not go with them, how do you know they asked him for the privilege, or actually got permission from him to do so?

Ans. By seeing them quarry the stone afterwards, and by their telling me that they had got his permission.

By same. What persons did you so send, that you afterwards saw quarrying? Name the persons.

Ans. I cannot recollect who the persons were.

By same. State what kind of a quarry it was, and its locations, whether in the esplanade, or bank, or bed of the river?

Ans. It was considered good building stone. It was some 100 yards from the foot of the bank, and may be considered in the bed of the river.

By same. Was the quarry often bare while you knew it?

Ans. I knew it bare some two or three times while I lived in [286] Newport. At one time I recollect it was bare for a considerable time.

By same. What point was the regular ferry-landing during the time you run the ferry?

Ans. The regular ferry-landing was at the foot of York street.

By same. Were you running the river in the lower trade, at any time during your residence at Newport? If so, state what length of time, and what years.

Ans. I was running in the river trade, below Cincinnati, from July, 1836, to May, 1837.

By same. Were you engaged in business in Cincinnati, Ohio, between the years 1831 and 1840? If so, state what business, and how long you were engaged.

Ans. I was engaged in the boat store and grocery business, in

Cincinnati, for about 14 months, from the spring of 1837, to spring of 1838.

By same. When did you leave Newport and move away, and how long since you have lived there?

Ans. I left Newport in October, 1841, and have since that time resided in Frankfort, Kentucky.

By same. How do you know that John Doxon run the ferry from Newport, under General Taylor, after you left there?

[287] Ans. By crossing at his ferry frequently after I left there, and from what he told me about it.

By same. Was it then anything more than a supposition on your part?

Ans. He told me he had taken a new lease from General Taylor, after our lease expired, and he and his son was running the ferry when I was afterwards there.

By same. When you speak of landing at East Row street, do you mean at the improved street, or was it at a bar a considerable distance out in the river bed? State how far out.

Ans. The point at which I landed at East Row street, was from 50 to 100 yards out from the end of the paved street, at a gravel bar.

By same. Did any of the citizens of Newport, or others, used to keep skiffs, or other crafts, and cross themselves and friends over to Cincinnati, from the esplanade?

Ans. I have known some of the citizens to get skiffs for the purpose of crossing the river when they wanted to cross at an earlier hour than the ferry-boat was in the habit of crossing. But this only continued for a short time, for I would make arrangements to have them taken across at such times as they wanted to go.

[288] By same. In what year was it you instituted suit against a ferryman from the Ohio side, for ferrying from the Newport side? What ferryman was it you enjoined? What Court did you institute suit in? Who granted the injunction?

Ans. I do not recollect the year. The ferryman was either Ferrin or Wall. The suit was instituted in the Campbell Circuit Court, Harry O. Brown being the Judge by whom the injunction was granted.

By same. What was the title of the suit? Was you the plaintiff?

Ans. The suit was either in the name of General Taylor, or in my name. I paid the lawyer's fee in the case.

By same. Was you present when the Sheriff took the boats belonging to the ferryman from Ohio?

Ans. I was not present; I was on the Ohio side of the river.

By same. Did you see the ferryman, from the Ohio side, swim the river because the Sheriff was after him with your injunction, &c., as above stated by you?

Ans. I did not see the ferryman jump out of the boat and swim the river; I only know that from hearsay; the Sheriff told me so.

[289] Question by plaintiff. When, from high or low water, or any other cause, you wanted to use any other landing than that of York street, did you, or did you not, claim the exclusive right to use any such landing, and direct other boats to move away?

Ans. Of course I did. I do not recollect of having to move any boats from other points. Every person knew that I claimed the exclusive right to the ferry along the whole shore, from the mouth of Licking to Taylor's gut, and they kept out of my way.

By same. Do you know that person or persons who regularly kept skiffs to ferry over themselves and friends, or was this only done sometimes by persons in a hurry?

Ans. The officers at the Garrison kept a pleasure-boat, and were in the habit of crossing themselves and families, but I do not know of any other persons who kept regular skiffs or boats for that purpose.

By same. You say that the Sheriff of Campbell county took the skiffs of the ferryman of Cincinnati. Who was interfering with your ferry-privilege? To whom did he deliver said skiffs, and what did he say at the time?

To this question the attorney of the defendants objects.

Ans. The Sheriff had the skiff hauled up from the water's edge, [290] to the top of the bank; one of the skiffs was sawed in two; I do not know what afterwards became of them.

And further saith not.

G. W. DOXON.

[Taylor. Lease to Doxon. No. 50.]

The leases referred to in the foregoing deposition are as follows, viz:

This contract and agreement, made this first day of May, 1835, between James Taylor, of Campbell county, and State of Kentucky, of the one part, and Geo. W. Doxon, of the Town of Newport, and State of Kentucky, of the other part, witnesses: The said Taylor leases to the said Doxon his ferry across the Ohio river, from his landing in front of Newport to the Cincinnati landing, to commence the first day of May, 1835, and to continue for six years. The said Doxon is to pay said Taylor the sum of nine hundred dollars a year rent for the same, in lawful money of the United States, and to be paid monthly, in advance; and should said Doxon, at any time be more than twenty days in arrear, in paying up each month's rent of said ferry, the said Taylor reserves to himself the privilege of re-entering and taking possession of the same; but said Doxon is not to be at liberty to give up the ferry; and said Taylor shall be at

liberty to proceed to recover each month's rent, or any arrears of [291] rent, whenever the said Doxon shall omit to pay the same for a longer time than twenty days, during this lease. The said Doxon is to keep a good steam ferry-boat for the purpose of carrying passengers, wagons, and carriages of every kind, during this lease, across the Ohio river, from the landing in front of Newport, to the landing at Cincinnati aforesaid; and is, also, to keep all other necessary boats and crafts, such as flats and skiffs, for the purpose of conveying passengers, wagons, carts, carriages, and produce across said ferry. The said Doxon is to keep said Taylor free from all damages, should he or any of his hands neglect to keep said ferry in a correct and attentive manner, and to keep said Taylor free from all fines and damages, on account of any injury that may be done either to the boats, persons, or property, by himself or his hands employed, during the continuance of this lease. And should the County Court of this county require boats to be kept at any point on the Ohio river, above or below the present landing, the said Doxon is to provide such boats as may be required for the purpose of transporting passengers, &c., across said ferry to Cincinnati, The said Doxon is to cross forward and backward from Newport to [292] Cincinnati, and from Cincinnati to Newport; all of said Taylor's family, sons, and sons-in-laws' family, free of charge, and also all persons engaged in said Taylor's employ; also all his wagons, carts, carriages, and horses, and produce, and anything he may wish to have taken over and brought back, as also anything of his sons, or sons-in-law, also such of his and their servants as may be sent across said ferry, free of charge. The said Taylor agrees, that in case the County Court of Campbell, or the Legislature of Kentucky, should establish another ferry, and vest the right in any one else besides the said Taylor, across the Ohio river, from Newport to the City of Cincinnati, then he will deduct so much from the rent as its value is decreased by the establishing of any such ferry. And, in case the said parties cannot agree as to the amount to be deducted, they are each to choose an individual, of honorable standing, to arbitrate the matter, with power for those two, so chosen, in case they differ, to choose an umpire, whose award shall be conclusive on the subject, and binding on the parties. The said Doxon binds himself to keep the landing [293] to the ferry, or ferries, in good order and repair, and to save said Taylor harmless and free from all fines or presentments relative to the same. Said Taylor agrees that said Doxon shall have the full and free use of said ferry, and hereby gives him possession of the same. And the said Taylor is not to exercise the privilege himself or grant it to any one during this lease. The said Taylor also leases to said Doxon the grounds now enclosed for a race track, and to be used for that purpose for six years, from the first day of May, 1835. The fencing to be of boards all around the

same, with good locust posts, and to be kept in good repair, and the whole ground to be delivered to said Taylor, well enclosed with a good board fence, at the end of this lease. The said Doxon is to pay said Taylor rent for said ground, the sum of three hundred dollars for each and every year during the continuance of the lease, which is reserved and payable in lawful money of the United States, which is to be paid as follows: One hundred and fifty dollars on or before the first day of June, in each and every year, and one hundred and fifty dollars on or before the first day of October, in each [294] and every year during this lease. In relation to the ferry, rented as aforesaid, the said Doxon is to keep a steam ferry-boat for ferrying at said ferry, during the continuance of this lease. As witness our hands and seals, this first day of May, 1835.

JAS. TAYLOR, [SEAL.]
G. W. DOXON, [SEAL.]

Witness,
JAS. TAYLOR, JR.

James Taylor having obtained a ferry license on the Cincinnati side, it is agreed between James Taylor, John Doxon, and Geo. W. Doxon, that said Taylor leases the two ferries, the one on the Newport side as well as the Cincinnati side, for the sum of $1,400 a year, payable monthly, in advance; said Doxons to pay the license for ferry on Cincinnati side, also the taxes on the wharf-business, the $1,400, the principles of the within contract and lease to Geo. W. Doxon are adopted as if they were again set forth in this lease; to commence 12th November, 1838, and continue for six years from the first of April next; a lease to be written out in full, embracing the terms and principles in the lease to Geo. W. Doxon within referred to; this contract and lease not to be assigned or [295] transferred to any one, on any pretext whatever; new steamboat to be built and put on by 1st February, and continued during this lease.

Witness our hands and seals, Nov. 10, 1838.

JAS. TAYLOR, [SEAL.]
JOHN DOXON, [SEAL.]
G. W. DOXON, [SEAL.]

Witness,
JAS. TAYLOR, JR.

Lease No. 100.

[Taylor. Lease to Doxon.]

This contract, made this 12th day of November, 1838, between James Taylor, of Campbell county, and State of Kentucky, party of the first part, and John Doxon and George W. Doxon, party of the second part, witnesseth: The said Taylor leases to the said John

and George W. Doxon, his ferry across the Ohio river, from his landing in front of Newport to the Cincinnati side, to commence the date aforesaid, and to continue six years from the first of April next. The said John Doxon and George W. Doxon bind themselves, jointly and severally, to pay said Taylor the sum of nine hundred dollars a year rent for said ferry, which rent is reserved and payable *in money*, and in lawful money of the United States, and to be paid monthly, in advance. And should the said party of the second part at any time be more than thirty days in arrear in paying up each month's rent of the ferry aforesaid, the said Taylor [296] reserves to himself the privilege of re-entering and taking possession of the same; but the said party of the second part is not to have the right to give up or abandon said ferry; and the said Taylor shall be at liberty to proceed to recover each month's rent, or any arrears of rent, whenever the said party of the second part shall omit to pay the same for a longer time than thirty days during this lease. The said John and George W. Doxon are to keep a good steam ferry-boat for the purpose of carrying passengers, wagons, and carriages, during this lease, across the Ohio river, from the landing in front of Newport to the landing at Cincinnati, aforesaid; and they are also to keep all other necessary boats, or crafts, such as flats and skiffs, for the purpose of conveying passengers, wagons, carts, carriages, and produce, across said ferry. The said John and George W. Doxon are to keep said Taylor free from all damages, should they, or any of their hands, neglect to keep said ferry in a correct and attentive manner, and to keep said Taylor free from all fines and damages on account of any injury that may be done, either to beasts, persons, or property, by themselves, or their hands employed, during the continuance of this lease.

[297] And should the county court of this county require boats to be kept at any other point on the river, above or below the present landing, the said John and George W. Doxon are to provide such boats as may be required for the purpose of transporting passengers, &c., across said ferry, to Cincinnati. The said John and Geo. W. Doxon, are to cross forward and backward from Newport to Cincinnati, and from Cincinnati to Newport, all of said Taylor's family, his sons and sons-in-laws' family, free of charge, and also all persons engaged in said Taylor's employ, also all his wagons, carts, carriages, and horses, and anything he may wish to have taken over and brought back, as also anything of his sons or sons-in-law, and such of his or their servants as may be sent across said ferry, free of charge. The said Taylor agrees that in case the county court of Campbell or the Legislature of Ky. should establish another ferry, and vest the right in any one else beside said Taylor, across the Ohio river, from Newport to Cincinnati, then he will deduct so much from the rate as its value is decreased by the establishing of any such ferry; and in case the said parties cannot agree as to the

amount to be deducted, they are each to choose an individual of honorable standing, to arbitrate the matter, with power for those two [298] so chosen, in case they differ, to choose an umpire, whose award shall be conclusive on the subject and binding on the parties. The said John and Geo. W. Doxon bind themselves to keep the landing to the ferry or ferries in good order and repair, and to save said Taylor harmless and free from all fines and presentments, relative to the same. Said Taylor agrees that the said John and Geo. W. Doxon shall have the full and free use of said ferry, and hereby gives them possession of the same. And the said Taylor is not to exercise the privilege himself or to grant it to any one else, during this lease. The said John and Geo. W. Doxon are jointly and severally bound to fulfil, all the covenants in this contract and lease. It is expressly understood that this contract and lease is not to be assigned, set over, or transferred in any way to any one, without the consent of said Taylor in writing, endorsed on this lease. The party of the second part are to keep a steam ferry-boat at said ferry during the continuance of this lease. As witness our hands and seals this day and year first above written.

JAS. TAYLOR, [SEAL.]
Duplicates interchanged, JOHN DOXON, [SEAL.]
G. W. DOXON. [SEAL.]

[299] I agree that the Doxons shall pay only seven hundred dollars rent for the ferry, for the year 1841, but this is not to stand to any other years.

Feb'y 8, 1841.

JAS. TAYLOR, Jr., for
JAS. TAYLOR.

It is agreed that Doxon shall only pay four hundred dollars rent of ferry for one year from Jan'y, 1842, to Jan'y, 1843; this does not apply to any other years.

JAS. TAYLOR, Jr., for
JAS. TAYLOR,
and by his instructions.

[Deposition of Joseph Temple.]

The deposition of Joseph Temple, taken on the 5th June, 1854, who deposeth, &c.

Question by pl'ff. State who made the present improvement of the wharf and landing at the foot of York street, in the City Newport, and all you know in reference to making of the same, and when it was made.

Ans. Col. James Taylor made a contract with me to repair that wharf, and I made it out thirty feet further from low water mark into the river, and made it 66 feet wide on top; I filled it on one

place nine feet. The improvement was made in 1851, commencing in August, and he paid me from twenty-five to twenty-seven hundred dollars for it.

By same. Do you know anything about a vote being taken by the citizens of Newport, whether they would or would not assist in making that improvement, or not, and how was the vote, if any, decided?

[300] Ans. There was an application made to the Council, and they ordered a vote of the citizens on it; there was almost three hundred votes against making the appropriation, and only five for it.

By same. What were the reasons asssigned for their not being willing to assist in making the said improvement?

Ans. Some of the citizens said they would not vote to improve James Taylor's property; I do not know what the City Councils said on the subject, as I was not at their meeting.

By same. What was the condition of the wharf prior to Taylor's making the improvement, and were there any complaints made as to its grade and condition of it?

Ans. There was a good deal of complaint made; it was very steep and rough, and very hard to get up with even an empty wagon, and it was improved by breaking stone on it and gravel on it and grading and putting two under it to carry the water under it instead of over it; this was the improvement done by Taylor, protected by sunk boats and rocks.

By same. Are you acquainted with the ferry-boats at Covington ferry to Cincinnati? If so, state how they compare in point of accom-
[301] dation to those run by Capt. Air, at Newport?

Ans. I am acquainted with them, and the boats run by Capt. Air *is* equally as good as they are, and Air affords as good accommodations.

By same. Are the rates higher or lower at Covington, than those charged at Newport?

Ans. I have paid more there.

Cross-examined by def'ts' att'y. What was the manner in which the improvement has been done of the wharf at the foot of York street, before Taylor made the repairs in 1851?

Ans. It had been paved.

By same. What did you do with the rock it had been paved with, when you made the repairs in 1851?

Ans. Part of the rock that was left there was broke upon the wharf.

By same. Was not the question submitted to the people for a vote in 1851, above referred to by you, "whether the City Council should appropriate one thousand dollars towards the repairs of the wharf at the foot of York street? State whether you have seen the resolation on which that vote was taken.

Ans. I do not know anything about the thousand dollars; all I

know is, that the citizens said they would not improve James Taylor's property.

By same. State whether any of the city officers of Newport laid [302] off said repairs and superintended the work; and if so, what officers?

Ans. James Lindsey, the City Engineer, laid off the work; William Ross was with him a while, I believe; he was one of the City Council at the time; Lindsay was employed by James Taylor to lay off the work; I do not know who employed Ross.

By same. When you speak of the boats of Air, compared with the boats of Covington, do you refer to the time before the Commodore commenced running, or since that time?

Ans. At this time. The Covington boats and all have been fixed up within a year or two.

By same. Are you sure that the Covington boats have had cabins on the stern, but a year or two?

Ans. The last boat they built was two years since. The old Washington had no stern cabin on her.

By same. How long since the two boats of plff's at Newport had stern cabins put on them?

Ans. Both since January last, as near as I can recollect.

By same. How wide was the wharf at the foot of York street, on the top, before you made the repairs for Taylor, in 1851?

[303] Ans. When I commenced I think it was about fifty feet.

And further *sayeth* not.

JOSEPH TEMPLE.

[Deposition of E. Dunlap.]

The deposition of Eleazer Dunlap, taken on 5th of June, 1844, who deposeth, &c.

Question by pl'ff. State what you know of the wharf boat at *Cincinnati*, used by Capt. Air, for the use of his ferry-boat, the size of the same, its adaptation for accommodation of passengers, the manner in which it is kept, and the means you have in obtaining your knowledge in regard to the same.

Ans. The boat is eighty feet in length, and fifteen feet in width. The cabin is twenty-four feet by eleven. There is three apartments to it. I think it is well adapted to accommodate the public, and amply sufficient for all the travel; it has always been kept clean and comfortable for the last four years. I have occupied the boat for the last four years, and been there almost day and night; one room is fitted up comfortable for passengers when they come down and do not find the boat there, to sit in, and in cold weather it is always well warmed with a good stove; one of them I use as a store-room or confectionery, the third for a bed-room.

By same. How long does the ferry-boat of Captain Air run

during the night, and what accommodation is furnished by him for [304] protection of persons or property to those who wish to cross after night?

Ans. One of the boats run all night; when there are any calls they are answered, at any hour of the night. The protection is good; they are provided with good lights, and a comfortable place to be sheltered from the weather.

By same. How long does the Commodore run after night, and what is the accommodation furnished by its wharf-boat, and the uses to which it is put during the night-time?

Defendant's attorney excepts to the above as relating to the present time, and having nothing to do with this cause.

Ans. She runs until nine or ten o'clock; here lately, she has laid up about nine o'clock. The wharf-boat is not furnished with any lights; there is a cabin there that will protect them from the storm, but nothing else. I have frequently seen it filled with loafers, and women of ill fame will collect there and shut up the doors.

By same. What are the accommodations furnished by Captain Air, in the way of ferry-boats, from the Newport shore to Cincinnati, and back? State whether they are good or bad, and the rapidity with which the boats are run.

[305] Ans. The accommodations *are* good. Each boat *makes* a trip every twelve or fifteen minutes; there are two boats running steadily, both provided with good, comfortable, and well-furnished cabins in the stern, nicely painted, and ventilated; one of them is grained very nicely; the other painted plain, and very neat, and always kept very clean.

By same. What articles do you sell in the room you occupy as a store on said boat, and is the establishment you keep regarded as an accommodation to the public?

Ans. Tobacco, se*gares*, candies, nuts of various kinds, fruit of different kinds, cakes, soda and mineral water, also beer, and, on certain occasions, sometimes something stronger, but a very little of it. I have heard a number of both ladies and gentlemen say, that they considered it a very great accommodation.

By defendant's attorney. State what interest, if any, you have in the wharf-boat on the Cincinnati side you have spoken of as being occupied by you?

Ans. I, some four years since, bought the cabin and contents from John Simmons, with the consent of Captain Air, that I could stay there and keep the articles as stated above for sale, as long as I kept it decent and respectable. There has been no wharf-boat [306] built since then, and the cabin has been rebuilt twice since then.

By same. Has not the present cabin been built since the Commodore was stopped by injunction in this suit?

Ans. It has.

By same. What is the size of the room appropriated in the cabin on the wharf-boat, to the common use of passengers?

Ans. Twelve and a half, by eleven, I think, with a good shed-roof extending out at the end eight feet, and on the front side, about two feet, next to the river.

By same. What time do you refer to when you speak of seeing loafers and loose women go into the wharf-boat *of*, at the landing of the Commodore? Was it before or since the Commodore was enjoined in this action?

Ans. It was since the injunction, and since she commenced running the last time.

By same. When you spoke of there not being lights kept at the landing of the Commodore, and of that boat laying up at nine or ten o'clock, do you refer to the time before, or since the Commodore was enjoined in this action?

[307] Ans. Since she commenced running the last time; since the injunction.

By same. Was it since the Commodore has been run by John Boyd?

Ans. Yes, sir.

By same. How often have you seen loafers and loose women congregate on the platform of the Commodore, as above stated?

Ans. Some eight or ten times that I know of; it is almost a nightly occurrence now.

By same. State who of that character you have seen there; name the persons.

Ans. I do not know that I know any of the persons.

By same. If you don't know any of the persons, how do you know that they are loafers and loose women?

Ans. I judge by their conduct and conversation, as I heard a great deal of blackguarding and swearing from both sexes.

By same. Have you heretofore, at any time, kept playing-cards for sale on the wharf-boat, as occupied by you?

Ans. Heretofore I have, but not recently.

By same. Have you had, allowed, or permitted card-playing or other games at the same place?

Ans. We have played for amusement some time since.

By same. How long since?

[308] Ans. Two or three months.

By same. Have you not played, or permitted playing of cards at that place, other than for amusement merely? Has there not been betting of liquor, or other things?

Ans. There has been some playing for segars, and something to drink, but not for money.

By same. Have the cabins, on the stern of the boats of plaintiffs, not been built since the Commodore has been enjoined in this

action, and were there any cabins on the sterns of those boats before that time?

Ans. There was no cabins on the stern of the boats until the Commodore come out. I do not know when the injunction was served.

By same. What kind of a wharf-boat is there on the Newport side, compared with the boat, as it is now, on the Cincinnati shore, at the landing of the plaintiffs' boats?

Ans. The cabin is not so good as on the other side. It is not as well provided with seats, nor is it kept as clean; but there is but little use for them now, the boats run so rapidly. I do not know as to the roof, whether it leaks or no; the one on this side is not painted.

[309] By same. Was the cabin on the Cincinnati side painted before the new cabin was put on you have mentioned above?

Ans. Yes, sir.

Question by plaintiff, Taylor. What was the cause of your building the new cabin on the wharf-boat you speak of?

Ans. Because the other was too heavy, and was too much weight on the platform; and when they built a new wharf-boat, the old cabin did not fit the boat.

And further saith not.

ELEAZER DUNLAP.

[Deposition of J. M. McArthur.]

The deposition of J. M. McArthur, taken on the 5th June, 1854, who deposeth, &c.

Question by plaintiff. State, if you please, who were the Assessors of taxable property, for the Town of Newport, during the year 1841? State in whose handwriting the Assessors' book is in; examine the book now before you, and state whether that is the Assessors' book, and please copy the assessment on that book of the esplanade. State who made, and by what authority and direction said entry of taxation of the esplanade and wharves of said town were made?

Ans. A. Boyd and myself were the Assessors for the year 1841; the handwriting is principally mine; the books before me now, *is* [310] the Assessors' book for that year. Taylor James, Sr., esplanade fronting the Ohio river, including wharves, &c., $100,000—300 00. Boyd and myself, as Assessors, made the above assessment (I think) in conformity to an order of the Board of Trustees.

Cross-examined by defendant's attorney. State whether you have been an officer of the Town, now City, of Newport; and if so, what office or offices you have held, and for what length of time, and when you held them?

Ans. I have been an officer of the town at divers times, when I resided in the town; have been Trustee, think nine or ten years in

succession; President of the Board, Treasurer, and Assessor; held the above offices during the years, between the years 1838 and 1848.

By same. State whether you ever knew the esplanade or wharves to be assessed for taxation by the town Assessors, in any other year except the year 1841, and why it was done that year?

Ans. I do not recollect of its ever having been done in any other year; there was an ordinance passed about that time, assessing a tax upon boats landing, and laying at the landings over a certain number of days. Their right to assess said tax was questioned, or [311] doubted, and the order above named was made to make the assessment on the esplanade, in Taylor's name.

By same. State whether the assessment was enforced by the collection of the tax so assessed, or what disposition was made of it?

Ans. There was no collection ever made from said assessment.

By same. State whether you ever made any wharves, or other improvements, on the strip of ground between the lots and the Ohio river, for the City or Town of Newport; if so, what improvements, and at what expense to the town, and when made?

Ans. I made an improvement at the termination of Monmouth street, for the city, (or town,) at a cost of about $4,900. I think about the year 1841 or 1842; I received in payment bonds of the town, bearing six per cent interest, which have all been paid.

By same. Who has exercised jurisdiction and control over the said strip of ground, since your knowledge of it? and state, also, what other improvements have been made by the town, on said strip of ground, besides said wharf at foot of Monmouth street.

Ans. The town has exercised jurisdiction over that part, in the same manner she has over her streets and alleys; she has improved [312] the street at the foot of East Row, at York and Columbia streets, and perhaps made some other temporary improvements on other parts of said ground. I have resided in the town about thirty-eight years, and have been acquainted with these grounds during that time. In all the improvements above named, there was contributions or subscriptions, made by citizens of the town, to said improvements, among which citizens was James Taylor, Jr., J. W. Tibbatts, E. L. Southgate, and others, not now recollected.

And further this deponent saith not.

J. M. McARTHUR.

[Deposition of George Perry.]

The deposition of George Perry, taken on the 5th June, 1854, who deposeth, &c.

By Jas. Taylor's att'y. State how long you have been acquainted with the Town of Newport, and who has had possession of the ferry across the Ohio river, at Newport, and its landings, from your earliest recollection, and who has uninterruptedly run said ferry.

Ans. I have been acquainted with Newport, since 1804 or '5. I think James Taylor, Sen'r., was in possession of the ferry when I first knew it, and has been ever since I knew any other person to have.

By same. State whether you lived or acted as agent for Gen'l [313] James Taylor, and state what acts of ownership Gen'l Taylor exercised over the esplanade, and state all you know of his preventing rock being quarried on said esplanade, and how far the acts of said Taylor extended on said esplanade.

Ans. I acted as agent for Taylor, beginning in 1819, and for several years afterwards. I frequently heard him say that the right of the esplanade was in him, but that it was for the use of Newport as a common. I know that he prevented people from coming from Ohio and quarrying stone in the river, and in the river banks.

By same. State at what points the ferry-boats of said Taylor landed on said esplanade, and whether, in the conversations of said Taylor alluded to, he did not claim the exclusive privilege of ferrying on the whole esplanade?

Ans. When I first knew it, Jacob Fowler had the ferry rented, and landed at the mouth of Licking river, and ferried across the Ohio and Licking, both. After Fowler left it, Gen'l Taylor run the ferry himself, by a black man, by the name of Adam, and he landed, generally, about the mouth of Columbia, with the skiff, but [314] landed *at* the way up to Monmouth. Taylor run it by different black men.

By same. State whether you were not, at one period, one of the trustees *of the trustees* of the Town of Newport; whether the trustees did not consider the whole landing in front of Newport, with the exclusive ferry-right, to be in Taylor, giving only to the citizens a right of common; and state your reasons for the opinion.

Ans. I was a trustee, at one time, and it was decided by the Board that the right of the landing and ferry-right was in Taylor, and giving to the citizens the use of the common. I was one of the trustees at the time, and we had the act of incorporation before us, and we decided from that.

By same. State how the question happened to arise in the Board of Trustees.

Ans. If I recollect right, old Mr. Mayo brought the question up, by claiming the right of ferry and esplanade for the town.

And further this deponent saith not.

GEORGE PERRY.

It is agreed by the undersigned counsel for the complainants, James Taylor and Robert Air, and the counsel for the defendants [315] in the same suit, that the Assessors' Book of the Town of Newport, for the year 1841, and referred to by James

McArthur, in his deposition, shall not be copied into the Record, but shall be returned into the Clerk's office of the City of Newport. We agree that said book, made out by McArthur and Boyd, as Assessors for that year, contains the following entry: "James Taylor, Sen'r."

"Esplanade fronting the Ohio and Licking rivers, including wharves, &c., 100,000—300 00," which is to be used as evidence to the same extent as if the original Assessors' book were before the Court.

J. W. STEVENSON, of Counsel
for TAYLOR & AIR.
F. M. WEBSTER, of Counsel for Defts.

[Deposition of Sam'l Campbell.]

The deposition of Samuel Campbell, taken on the 6th June, 1854, who deposeth, &c.

Question by plaintiffs' att'y. State if you are in the habit of crossing the Ohio river on Capt. Air's boats. State the facilities you have found in crossing by day and night; whether you have ever been delayed or inconvenienced?

I have crossed here frequently, both day and night. I never had any inconvenience in crossing, while they run the skiff after night. [316] I could always get across by hollowing; and since the opposition boat has been running, I have crossed in the boats after 12 o'clock at night.

By same. State where you reside, and what is your business; whether it is necessary for you to cross the river frequently. State whether the cabins on Air's boats are comfortable; whether the officers are accommodating; the speed with which the boats cross.

(So much of the foregoing question as relates to Capt. Air's boats, &c., at the present time, is excepted to by defendant's attorney.)

Ans. I live on Columbia street, in Newport; my business is mateing on boats running up and down the river. When I am about home, I cross the river frequently, some two or three times a day. I think the cabins are very comfortable and convenient, and good enough for any one to cross on. The officers have always been very civil and accommodating to me; as to the speed, I cannot say, but sometimes faster than at others, but at all times sufficiently fast for accommodation.

And further saith not.

[317] SAMUEL CAMPBELL.

[Deposition of W. H. Turner.]

The deposition of William H. Turner, taken on the 6th June, 1854, who deposeth, &c.

State what arrangements you have made with Capt. Air about night ferrying; the facilities afforded the public for crossing the river at night; who receives the emolument of night ferrying; and the object, as you understand it, of Capt. Air's entering into the arrangement.

(The defendant's attorney excepts to the foregoing question as irrelevant to any of the issues in this action, and also relating to the present time.)

Ans. When the ferry-boat commenced running after night, he hired me as pilot of the boat, and paid me seven dollars a week; it has been four or five years since we made that arrangement. This arrangement was only until twelve o'clock. Brogan, at that time, run the skiff, after the boat laid up, for the accommodation of those that wished to pass, but was taken sick about that time, and I took his place, and received all that I could make. Capt. Air's object was to accommodate the public, as I believe.

Question by same. State whether or not the steam ferry-boat of Capt. Air runs all night; and whether or not you receive all the emoluments of ferrying after twelve o'clock at night, both of the skiffs and of the ferry-boat.

Ans. The boats run all night; and all that is made by her I [318] received as a compensation for my care and trouble.

By same. State whether or not Capt. Air's object, in this arrangement of giving you all the emoluments after twelve o'clock, was to secure your strict attention to the accommodation of the public.

(This question excepted to by defendant's attorney.)

Ans. It was his object to make me attentive.

By same. State how long the Commodore runs after night. What are the accommodations afforded by its wharf-boat, on Cincinnati side, and to what uses the said wharf-boat is put after night?

(This question objected to by defendant's attorney.)

Ans. The Commodore runs now until about nine o'clock; and one night there was several of us went up to the wharf-boat, on being told that there was a fight on board of it; when we got there, we saw a couple of women and young men there.

By same. What kind of women were these you speak of? Are such women in the habit of visiting the wharf-boats?

(This question objected to by defendant's attorney.)

Ans. I believed them to be loose women.

By same. State how long the Commodore has been running since the injunction laid upon her; where she has been running from, where running to.

[319] Ans. I think it is about five months since she was enjoined; but I cannot say how long she has been running since she was enjoined. She first commenced running from East row, and then drop down to Monmouth street, and has been running from there

ever since. This running from East row and Monmouth is since she was enjoined.

By same. State whether, since the injunction, the Commodore has carried freight or passengers to and from the Kentucky shore.

Ans. I have seen passengers pass on her both *ways* since the injunction.

By same. Are her landings now the same as they were before the injunction?

Ans. They are.

Cross-examined by defendants.

Will you please state whether persons were ever refused to be taken over by Captain Air, or by the hands on Captain Air's boats, who offered to pay by the month, according to the rates fixed by the County Court, and if they did not demand a *large* sum of persons, for monthly passage, *that* fixed by the Court?

Ans. I do not know, as I never saw anything of the kind.

By same. Did you not hear that such was the fact, either from Captain Air, or from some of his agents engaged in his employ?

[320] (This question excepted to by plaintiffs' attorney.)

Ans. I never did.

By same. Who is now the owner of the Commodore, and is now running her, and has been since she dropped down and made her trips from Monmouth street?

Ans. I do not know who owns her; John Boyd is now running her as captain.

By same. Is not the Commodore conducted with proper regard to the comfort of those who go on her? Do you know of any impropriety or indecencies having taken place on board of her while engaged as a ferry-boat?

Ans. I never knew anything indecent on board of her while running.

And further saith not.

W. H. TURNER.

[Deposition of E. W. Larue.]

The deposition of Edwin W. Larue, taken on 6th June, 1854, who deposeth, &c.

Question by plaintiffs' attorney. State what you know about the accommodations of Air's boats. What are the facilities afforded for crossing the river? State what your business is; whether you do not cross very frequently, both day and night; whether you ever had reason to complain of delay, or the accommodation of the boats or officers. (Excepted to.)

[321] Ans. The accommodations of Air's boats are as good as I could expect for the price. The accommodations and facilities are as good as I want, or ever saw. My business is as a pilot on steamboats, up and down the river, and frequently cross the river

both day and night, and frequently after twelve o'clock at night. I always got across whenever I come, and as quick as they heard me hollow, they came for me. I never had any reason to complain.

Cross-examined. Do you pay by the quarter or year, your ferriage? How much do you pay?

Ans. I pay fifty cents a month.

And further saith not.

EDWIN W. LARUE.

[Deposition of John Mead.]

The deposition of John Mead, taken on 6th June, 1854, who deposeth, &c.

Question by plaintiffs' attorney. State what position you occupy on Air's ferry, and how long you have held it?

Ans. I am agent and clerk for the Ferry Company, and on the 1st of July next I have been there one year.

By same. State whether you were on the ferry-boat prior to the running of the Commodore?

Ans. I was.

By same. State what were the accommodations of Air's ferry-boats prior to the time the Commodore commenced running, whether [322] they were good or bad; whether they were sufficient for the accommodation of the public?

Ans. I think the accommodations was very good, and, as far as I have seen, they were sufficient for the accommodation of the public.

By same. Are you acquainted with the rates of *ferry* fixed by Judge Boyd? If so, state what they were.

Ans. I here file a certified copy of the rates as my answer, marked A B.

By same. State whether, in your opinion, from your knowledge of the business, two steam ferry-boats would be run at the rates fixed by Judge Boyd, and sufficient accommodations and facilities afforded the public? Could any man sustain the necessary expences attendant upon keeping up two boats at such rates?

Ans. To the best of my knowledge they could not; they could not without *losing* money.

By same. State whether or not, Judge Durall raised the rates of Air's ferry. State whether the rates of ferriage are lower or higher in Newport than in Covington. State whether there is more business done at the Covington ferry than at the Newport ferry.

Ans. I understand that Judge Durall did raise them, as far as [323] foot passengers, but other things are the same as fixed by Judge Boyd. They are higher on the Covington ferry than on Air's boats for teams, horses, &c., but their monthly ferriage is about the same, and the foot passengers are the same. There is a

much larger amount of business done at the Covington ferry, than at the Newport ferry; almost three times as much.

By same. State what the facilities of the Newport ferry are, compared with those at the Covington ferry?

This question is excepted to by defendants' attorney, on the ground that it relates to the present time.

Ans. I think they are better in every respect.

By same. How are the boats of the Newport ferry, compared with those of the Covington ferry? State the character of your boats, their speed, cabin accommodations, &c.

Excepted to by defendants' attorney, on the ground that it relates to the present time, and is a mere matter of comparison between the boats at Newport and Covington.

Ans. I think they are equally as good, or better than the Covington boats; one is better, and the other is equally as good as either of them, but one is rather smaller than theirs, and equal in [324] speed, yet we make quicker trips than they do; and to cabin accommodations, are superior to anything I have ever seen in the ferry line.

By same. What facilities have you for landing on this, and the other side of the river, and what had you before the Commodore began to run?

Ans. They are good on both sides of the river, and was previous to the commencement of the Commodore's running. There has been a new cabin built on the wharf-boat on the other side, since the Commodore commenced running, (a small one.)

By same. If any improvements have been made to your boats in Air's line, since the Commodore first began to run, state what these improvements were?

Ans. There has been fine stern-cabins built on both of the boats, nicely painted, and furnished.

By same. Can you state the cost *a* boat, such as either of those run by Mr. Air?

Ans. I do not know the actual cost, but would suppose about ten thousand dollars, from the best of my knowledge.

By same. Can you give the probable or approximate cost per annum of running one of those boats as a ferry-boat, including hire of hands, fuel, and wear and tear of machinery?

[325] Ans. To the best of my knowledge, about $15,000 for both boats.

By same. Examine the printed paper before you, marked "Cincinnati," and state whether they are the rates passed by the Council of Cincinnati, and charged on the ferry from the Ohio shore to this; if so, file them.

Ans. They are the rates, and I here file them, marked A C.

By same. State whether or not, you are, in low water, ever com-

pelled to change your place of landing on the Newport shore; if so, to what point or points is the change made?

Ans. There has been no change made since I have been on the boats.

By same. State if the Commodore is now running; if so, in what business *she is* engaged, whether as a coasting vessel, fishing-smack, or ferry-boat?

Ans. She is now running, and running as a ferry-boat.

By same. Between what points is she plying, and how far are her landings from those of the boats of Captain Air?

Ans. From the foot of Lawrence street, Cincinnati, to the foot of Monmouth street, in Newport, Kentucky. The landings on the Cincinnati side are very close, and we frequently come in con-
[326] tact when landing on the Newport side, only one square apart.

By same. Is the Commodore built for a freight-boat? Has she a hold, or is she built as a ferry-boat? If there is any material difference in her construction, state the difference.

Ans. She is not built for a freight boat; she has a hold, but it is a very shallow one; she is built like all ferry-boats that I have seen. She has a sharp bow, and Air's a square bow; her upper decks are rounding; Air's are square (forward). She has two chimneys and double engines. Air's has one, and single engine. She has a doctor; Air's has none.

By same. Has the Commodore carried passengers or vehicles from this side to her landing in Ohio, since the injunction?

Ans. She has.

By same. Is she now carrying passengers from this side? If you know anything of the purpose of her commander, Jno. Boyd, in regard to carrying from this side, state what that purpose is, and how you ascertained it.

Ans. She was carrying passengers last evening and this morning. Mr. Boyd asked me if I would not like to have a situation on
[327] the Commodore. I told him no, as I thought she was too short-lived; he observed that she was not so short, for if the law did not decide it, powder and ball would; and, for his part, he was willing to wrap himself in the stars and stripes, and die in the cause.

By same. State whether the paper marked A D, contains the rates as fixed by Judge Duvall, of the Circuit Court, and now charged by you.

Ans. They are the rates fixed by Judge Duvall, and now filed, marked A D.

Cross-questioned by defendants' attorney.

Who do the present owners of the Commodore obtain their landing from, on the Cincinnati side of the river?

Ans. Thomas Dadsworth did own it. I do not know who owns it now.

By same. How many feet on the river is occupied by Air on the Cincinnati side?

Ans. I cannot state positively, but about 100 feet or more.

By same. Does the landing of the Commodore adjoin that of Air?

Ans. It does.

By same. Who composes the ferry company you are engaged with?

Ans. Robert Air and James Walls.

By same. State whether James Taylor, the plaintiff, and his [328] family, all of his brothers-in-law, H. T. Harris, G. T. Williamson, and their families, all the sisters of James Taylor, their children, all their servants, and agents, and all their drays, carriages, horses, cattle, and stock of every kind, also their freight, go across the ferry run by the above company, free of charge, or are they charged like other persons?

Ans. I cannot say whether they pay Capt. Air anything or not. They have never paid me anything, as agent or clerk of the company, since I have been there.

By same. Do you keep the books of the company, and is there any account of the crossing, as mentioned in the last question, kept in the books?

Ans. I have kept the books of the ferry company for the last year; there is no account on them, with those persons, as to their crossing.

By same. Do their agents cross free, or are they charged?

Ans. They generally pass free.

By same. Do the tenants of Air's houses, in Newport, pay ferriage, or not?

Ans. They pay their ferriage.

By same. Have you acted as collector, as well as book-keeper? and what has been your understanding of the crossing of the per- [329] sons above mentioned, to charge them or not, Taylor and his relatives, agents, &c.?

Ans. I have been collector as well as book-keeper and it was my understanding that they were to pass without my asking them for ferriage.

By same. How many boats were running at the ferry, when you were first employed by Air and Wall?

Ans. There was two boats running, or had just commenced; they had just started their new boat.

By same. What were the average receipts, per week, of the boats, up to the first of January, last?

Ans. I cannot state without I had my books.

By same. How did the books balance? Did they show any profits? If so, how much?

Ans. Sometimes, at the end of the month, there was small profits, but, if the debts were paid, there would be none except the boats, as there was a new boat just built, and we had that to pay for in part; after the boat is paid for, there will be a profit.

By same. How many monthly passengers were there prior to January last?

Ans. I cannot say, as I never counted them.

By same. Was there a large or small number? State as near as [330] you can, from the best of your knowledge, the number.

Ans. There was a large number; I cannot state how many.

By same. State whether there is gunpowder transported over the Ohio, on the boats run by plaintiff, and to what extent it is done.

Ans. There is gunpowder carried across; sometimes one load a day; sometimes six or eight loads a day; one wagon runs every day from the magazine back of Newport to Cincinnati. I have seen six dray loads on the boat at one time. Sometimes each dray will make four or five loads a day.

By same. Have you, or not, refused to receive the twenty-five cents monthly ferriage, in advance, when tendered for crossing by the month, as fixed by the Court, from the Kentucky side?

Ans. I have refused it until the matter is settled by law; but told them that I would charge them the three cents for each trip.

By same. Have you refused many persons? State what persons, that you recollect of, you have so refused.

Ans. I have refused a good many, G. Charter, Binley, J. Klines, [331] and others I cannot now recollect.

By same. Did you receive orders to refuse the 25 cents, as above, from Air & Wall?

Ans. I received orders from Capt. Air to refuse.

By same. Do you carry both ways for 50 cents per month?

Ans. We carry passengers both ways for 50 cents per month.

By same. Have you known of any person that had offered or tendered the 25 cents, in advance, for crossing from this side, to be interrupted in landing on the Ohio shore, or of any such person being brought back to the Kentucky side, on the return trip, without their will?

Ans. I brought one or two back myself. They proffered me the 25 cents per month; those that had not been going by the month before that. I told them that we did not wish to make any contracts at 25 cents per month, and if they could not pay 50 cents per month for both ways, they could pay by the trip, 3 cents, which they refused, and I brought them back, against their will; I would not let them get off on the other side.

By same. Name such of them as you now recollect.

Ans. I did not know their names at the time, nor do I now know them.

[332] By same. What kind of a cabin is there on the wharf-boat, at the Newport landing, of Air & Wall? Describe it.

Ans. There is a cabin there, got a roof on it, and four sides; well ventilated. The roof is good; it is not painted neither inside nor out.

By same. Have you ever known more than the rates fixed by law, on the Cincinnati side, and the County Court, on the Kentucky side, to be charged or collected on the boats of the plaintiffs?

Ans. Not to my knowledge; only when persons present a one dollar bill, or upwards, then we have charged two cents for the exchange, in addition to the ferriage.

By same. When have you crossed at the Covington ferry, and how often?

Ans. I have crossed there a number of times, but I cannot say when, but I think about two months since I crossed last.

By same. What countryman is Robert Air, and how long has he been in this country?

Ans. I have heard it said he claims to be a Scotchman. I do not know how long he has been here.

By same. Who is running the Commodore now?

Ans. John Boyd is captain, I believe, and is running her with his crew.

And further this deponent saith not.

[333] JOHN C. MEAD.

(The exhibits referred to in the foregoing deposition as marked A, B, A, C, and A, D, will be inserted at the close of plaintiffs' deposition.)

[Depositions of P. W. Sarver.]

The deposition of P. W. Sarver, taken on 7th June, 1854, who deposeth, &c.

Question by pl'ffs att'y. State if you are in the habit of crossing the river frequently on Air's ferry-boats. State the accommodations of these boats. If, in your opinion, they are sufficient for the wants of the public.

Ans. I have been in the habit of crossing on them for the last three years, from ½ past 4 in the morning until 8 o'clock at night; there is as good accommodation now as any where on the river; they are sufficient for the wants of the public.

By same. State what your business is and where you reside. State if you are not necessarily obliged to cross the river at all times of the day and night, and whether you have any reason to complain of detention or of the accommodations of the boats or officers.

Ans. I reside in Newport, Ky.; my business is agent for steamboats, and I am compelled to be in Cincinnati by 4 o'clock in the [334] morning and generally stay there until night; I have no reason to complain of detention or of the accommodation of officers of the boat; they frequently put me across in the skiff, when the fog has been too thick for the boat to run; as to the accommodations of the boats I have no reason to complain now.

By same. State if you ever cross on the Covington ferry-boats, and if the accommodations on the Newport ferry-boats are not equal to those on the Covington boats.

Ans. I have crossed on the Covington boats, and I considered the accommodations on the Newport boats are equal to those at Covington.

By same. State as to the speed of the boats. Do they make good time between the two shores? Do they make as quick or quicker trips than the Covington boats.

Ans. They are boats of good speed; I do not see how boats could be handled quicker than they are; I have never timed them, but they make as quick trips as they do at Covington.

By same. Does the Commodore run at all times of the day and night?

[335] Ans. She does not start as early in the morning as the other boats; I do not know whether she runs after night or no.

By same. State what kind of a craft the Commodore is; is she built for a freight-boat or ferry-boat? Has she accommodations for passengers for a long trip? Can she be used for any other purpose than a ferry-boat?

Ans. I consider her a very good ferry-boat or pleasure boat; she has no accommodations for passengers on a long trip; as for freight I cannot say, for many of the boats on a short trip do not put freight in the hold; I saw the license, as I suppose, but did not read them; I saw floats, &c., as required by the law of Congress on board of the Commodore; and further saith not.

PHILIP W. SARVER.

The exhibits referred to in the depositions of John C. Mead are as follows, viz:

Exhibit marked A B.

STATE OF KENTUCKY,
Campbell County Court. } Sct.

September Term, 1851.

[Ferry rates of County Court of Campbell.]

It is ordered the owners, occupiers, or lessee of the ferry across [336] the Ohio river, from the City of Newport, in this county,

to the City of Cincinnati, Ohio, be hereafter allowed to charge the following rates of ferriage at said ferry, and no more. For each and every cart, wagon, dray, carriage, or other four-wheeled vehicle drawn by one horse, or other animal, including the driver and merchandise included therein, five cents for every cart, dray, wagon, carriage, or other two or four-wheeled vehicle, drawn by two horses or other animals, including the driver and merchandise conveyed therein, ten cents; for every cart, dray, wagon, carriage, or other vehicle drawn by three or more horses, including the driver and merchandise conveyed therein, fifteen cents; for each and every horse or other animal, rode or led, including the person riding or leading the same, five cents; for each and every head of cattle, horses, mules, or other animals in droves, not specially provided for in this order, five cents; for each and every head of sheep or hogs in droves, one cent; for freight shipped across said river, and not constituting a part of any load in transitu on any ferry-boat at said ferry, if in barrels, two cents per barrel, if in boxes, bales, or packages, one cent per hundred weight; for each and every foot passenger, [337] including his or her baggage, one cent; for every person or family not exceeding 8 in number, twenty-five cents per month each, to be paid in advance. It is also ordered that the keeper of said ferry be compelled to run the boat on the same until 9 o'clock P. M. of each and every day.

A copy. Attest JAMES H. PARKER, Cl'k.

[Ferry rates of Cairo, Ohio.]

Exhibit A C. "Cincinnati rates."

"An ordinance to further regulate ferries across the Ohio river, from the City of Cincinnati to the opposite shore, and to repeal certain ordinances and parts of ordinances to regulate ferries.

SECTION 1st. Be it ordained by the City Council of the City of Cincinnati, That from and after the passage of this ordinance, it shall be lawful for all licensed keepers of ferries across the Ohio river, to demand and receive the sums or prices herein stated, and no more. For carrying persons and property across the Ohio river as aforesaid, viz: For each and every two and four-wheeled cart, dray, or wagon, drawn by one horse or other animal, including the driver and other property conveyed therein, ten cents. For each additional horse or other animal, five cents. For each and every two or four-wheeled carriage, barouche, gig, or other vehicle of this [338] description, drawn by one horse, including the persons conveyed in such vehicle, fifteen cents; for each additional horse five cents. For each and every horse rode, or other animal led, not attached to a vehicle as aforesaid, including the persons riding or leading the same, seven cents. For each and every head of cattle, horses, mules, or other animals in droves, one cent and a half. For each and

every head of hogs in droves, two cents. For freight shipped across said river and not constituting a part of any load in transitu on any boat as aforesaid, if in wet barrels, three cents per barrel, if in dry barrels, two cents per barrel; if in boxes, bales, or packages, two cents per hundred weight. For large timber wheels, drawn by two horses or other animals, including the driver and load on said wheels, forty cents; for each additional horse or other animal, five cents. For each and every omnibus or other *vehicle* used for the transportation of passengers, if drawn by two horses, twenty cents, including the driver for each passenger therein conveyed; three cents. For each and every four-horse wagon, with load, including the driver, thirty cents. For each and every wagon loaded with hay or straw, including the animals drawing the same, and driver, forty cents. For each and every person on foot over ten years of age, including [339] his or her baggage, not to exceed fifty pounds in weight, three cents. For children under ten years with either parent, free.

SECT. 2d. That all licensed keepers of ferries across the Ohio river, from the City of Cincinnati to the opposite shore, shall provide and keep in complete repair a good and sufficient number of boats for the ready and safe conveyance of persons and property across the Ohio river, as aforesaid, and give due attendance to such ferries from early daylight in the morning until twelve o'clock in the evening, with a sufficient number of hands to properly work and manage said boats. They shall cause said boats to cross the Ohio river from the City of Cincinnati to the opposite shore as often as shall accommodate the applications for the conveyance of persons and property, and in no instance from early daylight in the morning until dark in the evening, shall the time intervening between the trips of said boats exceed fifteen minutes, and from dark in the evening until 12 o'clock P. M., the time intervening between the trips of said boats shall not exceed thirty minutes, except when prevented by ice, or unavoidable obstructions. Provided it shall be [340] lawful to demand and receive for carrying persons and property across the Ohio river as aforesaid, from dark in the evening until ten o'clock, P. M. fifty per cent. additional to the rates established in section first of this ordinance, and from ten o'clock P. M. until twelve o'clock, P. M. double the rates as provided in said section first of this ordinance.

[Ferry-rates fixed by Judge of Campbell Circuit Court.]

Exhibit A. D.

STATE OF KENTUCKY, Campbell Circuit Court. } Sct.

January 17th, 1853.

It is adjudged and ordered, that the following rates of ferriage from Newport, Kentucky, to Cincinnati, Ohio, be and the same are hereby established, to wit:

For each and every cart, wagon, carriage, dray, or other two or four-wheeled vehicles, drawn by one horse or other animal, including the driver, and merchandise conveyed therein, - - - - - - - - -	5 cents.
For every cart, dray, wagon, or carriage, or other two or four-wheeled vehicle, drawn by two horses, or other animals, including the driver, and merchandise conveyed therein, - - - - - - - - -	10 "
For every cart, dray, wagon, carriage, or other vehicle, [341] drawn by three, or more horses, including the driver, and merchandise conveyed therein, - -	20 "
For each and every horse, or other animal, rode or led, including the person riding, or leading the same, -	5 "
For each and every head of cattle, horses, mules, or other animals, in droves, (not specially provided for in this order,) - - - - - - - - -	5 "
For each and every head of sheep, or hogs, in droves, -	1 "
For freight shipped across said ferry, and not constituting a part of any load "in transitu," on every ferry-boat at said ferry, in *in* barrels, - - -	2 "
If in boxes, bales, or packages, per 100 lbs., - -	1 "
For each and every foot-passenger, including his or her baggage, - - - - - - - - - -	3 "
For every person or family, not exceeding eight in number, per month, each to be paid in advance, - -	25 "
For each and every family, over eight in number, payable in advance, per month, - - - - -	30 "

It is also ordered, that the keeper of said ferry be compelled to run the boat on the same, until nine o'clock P. M. of each and every day, and that the same be so fixed by the Campbell County Court.

A Copy. Teste. GUS. ARTSMAN, D. C.,
For BENJAMIN BEALL, Clerk.

And the plaintiff also produced in Court, as evidence, the following record, viz:

United States of America against (on information) The Steam Ferry-Boat Portland, &c.

[342] Pleas before the Hon. John Catron, and Thomas B. Monroe, Judges of the Circuit Court of the United States, for the 8th Circuit and Kentucky District, holden at the Capitol, in Frankfort, at the May Term, 1839.

The United States of America
against
The Steam Ferry-Boat Portland,
and
Jeremiah Kalfus, Master and Owner. } On Information.

Be it remembered, that heretofore, to wit: on the 10th day of November, in the year of our Lord one thousand eight hundred and thirty-eight, came the Attorney of the United States, in and for the Kentucky district, and filed, on information, in the name of the United States, against Jeremiah Kalfus, owner and master, Walker R. Carter, and Albert G. Watts, owners of a boat, propelled by steam, and called the Portland, to which proceeding the said Kalfus, Carter, and Watts, appeared by their attorney, H. Pirtle, Esq., and moved the Court for leave to show cause why the said information should *not* be quashed, which leave to show cause is granted them, and the arguments of counsel being heard, but the Court not being sufficiently advised, took time, &c.

[343] Which information is in the words and figures following, viz:

United States of America,
Eighth Circuit and District of Kentucky, } Sct.

Be it remembered, that Preston L. Loughborough, Attorney of the United States, for the District of Kentucky, who, for the United States, prosecutes in the behalf, in his proper person, comes into the Court of the said United States, for the Circuit and District aforesaid, at Frankfort, in said District, at the November Term of said Court, in the year of our Lord one thousand eight hundred and thirty-eight, and for the said United States, gives the Court here to understand and be informed, that Jeremiah Kalfus, Walker R. Carter, and Albert G. Watts, citizens and residents of the District aforesaid, and owners of a boat propelled wholly by steam, and called the Portland, which boat is a ferry-boat, and of more than twenty tons burthen, did, on the ninth day of October, in the year of our Lord one thousand eight hundred and thirty-eight, transport on board the said boat, whilst running under an ancient grant of a ferry-privilege of the State of Virginia, and a like ancient grant from the State of Kentucky, goods, wares, [344] merchandise, and passengers, in the District aforesaid, and on the Ohio river, a navigable water of the United States, from the Town of Portland, on the Ohio river, and in the District aforesaid, to the Town of New Albany, opposite to the said Town of Portland, and in the State of Indiana, upon the said Ohio river, without having first obtained from the proper officers of the said United States, in and for the District aforesaid, to wit: the Surveyor of the Port of Louisville, in the said District, nor from any other officer of the United States authorized to grant it, a license

so to do, under the existing laws of the said United States, and without having first complied with the conditions and requirements prescribed in and by the Act of Congress of the United States, passed on the 7th day of July, in the year one thousand eight hundred and thirty-eight, entitled "An Act to provide for the better security of the lives of passengers on board of vessels, propelled in whole or part by steam." And the said Attorney of the United States, further gives the Court here to understand and be informed, that at the time of the transportation as aforesaid, of the goods, wares, merchandise, and passengers, by the said owners on board of [345] their said boat, they had not, nor had either of them obtained either the certificate of the inspector of the hull of their said boat, nor the certificate of the inspector of the boilers, engine, and machinery of the same, as is directed by the Act of Congress aforesaid, and that neither the hull, nor the engine and machinery of the said boat, had been examined and inspected, as is directed by the Act of Congress aforesaid; and that the said owners had not, nor had either of them, at any time prior to the transportation as aforesaid, of the goods, wares, merchandise, and passengers, as aforesaid, on board of their said boat, applied to the District Judge of the said United States, in and for the District aforesaid, nor to any other District Judge of the said United States, to appoint any one or more persons to examine and inspect the boilers, engines, and machinery, or the hull of said boat, in the manner provided in Act of Congress aforesaid; and the said Attorney of the United States further says and avers, that the aforesaid acts and omissions of the said owners were in contempt of the laws and authority of the United States, and contrary to the form of the statute of the United States in such cases made and provided. And so the [346] said attorney says, that by reason of the premises, and by virtue of the provisions of the said Act of Congress, they, the said owners, have forfeited, and become liable to pay to the United States, the sum of five hundred dollars; and therefore, the said attorney prays the consideration of the Court in the premises, so that due process of law may be awarded against them, the said owners in this behalf, to make them answer the said United States, touching and concerning the premises aforesaid, and that judgment may be rendered by the Court against them, for the said sum of five hundred dollars.

P. S. LOUGHBOROUGH,
Attorney United States, for District of Kentucky.

And on a subsequent day of the term aforesaid, of said Court, to wit: on Monday, the 12th day of November, 1838, came the parties by their attorneys, and the respondents, by their attorney, moved the Court to quash the information filed herein; which motion being fully heard, and the Court being sufficiently advised, do con-

sider that said motion be overruled, and these respondents moved the Court for leave to file a demurrer herein, which was granted them, and thereupon said demurrer was filed accordingly.

[347] Which demurrer is in the words and figures following, to wit:

KALFUS, &c, OWNERS OF PORTLAND FERRY-BOAT
ads.
UNITED STATES.

And the said defendants come and defend the wrong and injury, when and where, &c., and say that the United States ought not to maintain her information herein against them, &c., because they say the said information, and the matters and things therein contained, are not good and sufficient in law, &c.; and this they are ready to verify, &c. Wherefore, they pray judgment, &c.

PIRTLE.

And afterwards, on a subsequent day of the term aforesaid of said Court, to wit, on Tuesday, the 20th of November, 1838, come the Attorney for the United States, and the Court being now sufficiently advised of and concerning the respondent's demurrer herein, it is considered by the Court that said demurrer be overruled.

And, afterwards, to wit, on Tuesday, May 11th, 1839, the following order was entered herein, viz:

The proceedings contained in the following order occurred on the fifth day of the present term, and are entered now for them, to wit:

This day came the parties aforesaid, by their attorneys, and on [348] motion of the defendants, leave is granted them to file their plea herein, which is done accordingly; to which plea the plaintiff filed a demurrer, to which demurrer the defendants filed a replication; and the Court having fully heard the demurrer, and the arguments of counsel, and being advised &c., are of opinion that the law arising on said demurrer is for the defendants, and that said demurrer be sustained; and the plaintiff saying nothing further, it is, therefore, considered by the Court, that the plaintiff take nothing by their information.

The plea, demurrer, and replication are in the words and figures following, viz:

KALFUS, &c.
ads.
UNITED STATES.

The said defendants come and defend the wrong and injury, when and where, &c., and say the plaintiffs ought not to have and maintain their actions, &c., against them, because they say that the said

Carter, Kalfus & Watts are the owners of the said ferry, and the said Kalfus is the lessee thereof, and was at the time mentioned in the information herein, by a lease from the other owners to him, and he alone had possession of said steamboat, and the possession and enjoyment of said ferry and its franchises; and they say that the said ferry was established by an Act of the General Assembly [349] of the Commonwealth of Kentucky, passed and approved on the day of , and long before the grievances in the information alledged, and, by the statute of the said Commonwealth, approved on the 13th day of December, 1796, and on the 22d day of December, 1806, the said ferry and its franchises were placed under the regulation and control of the County Court of the County of Jefferson, in said Commonwealth, in which county it is situated; that, by the statutes of said Commonwealth, the said County Court had authority to require a steamboat to be used, kept, and run at said ferry, from the Kentucky shore on the Ohio river, directly across to the Indiana shore on said river, and the said boat was employed by said Kalfus in performing the duties required as aforesaid, pertaining to the said ferry, and at the place at which said ferry was established, as aforesaid, and was not engaged, used, or occupied in the navigation of the Ohio river, or any other river, or in transporting passengers, otherwise than as a boat pertaining to said ferry, or in carrying or transporting goods, wares, and merchandise, other than such articles of property as were belonging to [350] and attending the persons who were traveling, crossing, and passing said river at said ferry; and said boat had not, therefore, been enrolled or licensed, &c., by any authority of the United States, and this they are ready to verify, &c. Wherefore, they pray judgment, &c.

PIRTLE.

And the United States, by their attorney, say they ought not to be barred from maintaining and having their action aforesaid, by reason of anything in defendant's plea, above pleaded, because they say the said plea, and matters and things therein contained, in manner and form as the same are pleaded, are not good and sufficient in law to bar the plaintiff's said action, and this they are ready to verify.

Wherefore, for want of a sufficient plea in this behalf, the said plaintiff prays judgment, &c., &c., &c.

LOUGHBOROUGH, Att'y U. S.

And the defendants say their said plea is good and sufficient in law, &c. Wherefore, &c.

PIRTLE.

A true copy. Attest, JOHN A. MONROE, C. C. C., K. D.
By BEN. J. MONROE, D. C.

DEFENDANTS' DEPOSITIONS.

[Deposition of Sam'l Perry.]

[351] The deposition of Samuel Perry, taken on the 6th day of May, 1854, who deposeth, &c.

Question by defendants' attorney. How long have you known the Town, now City, of Newport?

Ans. About sixty years since I first came here.

By same. How long have you resided in Newport?

Ans. Since 1811.

By same. What use has been made of the esplanade or strip of ground between the lots and the Ohio river?

Ans. It has been used for a common, and they built a market-house on it, is all the use that I know of.

By same. When was that market-house built on it, and where was it located? How far from the front of the lots, and was it a private market-house, or a public?

Ans. I suppose, in fourteen or fifteen; I am not certain which. I suppose about one hundred and fifty feet from the buildings, connecting at Monmouth street and running down. It was a public market-house.

By same. In what direction was it from the buildings?

Ans. On the river bank, a little west of north.

By same. Where were these buildings you speak of, located, and are the buildings there now?

Ans. On the corner of Monmouth and Front streets, or espla-
[352] nade, and most all the way to York street; the market-house was in front of them. None but one of the original buildings are now standing, that is on the corner of Monmouth and Front.

By same. Who has claimed and exercised control over the esplanade, since your knowledge of it?

Ans. I believe the town has claimed and exercised control of it ever since I could recollect, or have been here.

By same. How has that ground been held or used, as a public or private ground?

Ans. As public ground.

By same. State how long it has been so held, to your knowledge.

Ans. Since 1811.

By same. What improvements have been made on the esplanade, or any part of it?

Ans. Nothing but the streets to the river; there has been some picketing done lately, some four or five years since.

By same. How are the streets improved to the river, and what streets are so improved?

Ans. Monmouth, York, and Columbia, graded and paved, and East Row, the last-named, by Col. Tibbats, or the Manufacturing Company, or at least the most of it.

By same. Who made the other streets to the river?

Ans. It was done under the direction of the town.

[353] By same. How long ago were each of those improvements made.

Ans. Somewhere between 1833 and 1837.

By same. Who paid for these improvements?

Ans. A portion of it by the city, and some by subscription or donation.

By same. State whether or not the esplanade, or any part of it, has been used as a landing for boats, &c.?

Ans. The boats have always landed there, ever since I came here; all boats have landed that wanted to, and laid there as long as they wanted to.

By same. State whether or not you formerly run on the river, and whether you ever used the esplanade, or any part of it, for a landing, and, if so, how long ago, and for what length of time?

Ans. I run steamboats and flat boats on the river, and have kept flat boats here for a whole summer at a time, between York street and Monmouth; I have loaded the steamboat Princeton at York street several times; this was from 1833 to '35.

By same. State whether there has ever been within your knowledge a stone quarry within the esplanade, between the front of the lots and ordinary low water mark?

Ans. None to my knowledge.

By same. State whether rock were formerly taken out or quar-
[354] ried in the river; or if taken from the front of the town, state where.

Ans. There was rock taken out of the river near half way across, but none near the shore; to my knowledge there is rock about the mouth of Licking, but none quarried to my knowledge between York and Columbia; there was always deep water from two to three feet in low water; below there I have walked out on the rock for two hundred yards; I never saw it dry but twice any distance out, but I do not recollect the dates, but I think about 1824 or '5.

By same. State for whose use and benefit the rock were claimed and used, whether they were used as private or public property?

Ans. They were taken away by any of the citizens that wanted them, that would quarry them, and haul them away; when they were taken they were private property. No person claimed them or made any objection to them being taken.

By same. Before they were removed or got up from the bed of the river, were they considered public or private property?

Ans. They were considered public for any person.

By same. State what you know of persons from Cincinnati get-

ting stone there, and if you have heard Gen'l Taylor, dec'd, say any-
[355] thing about quarrying or getting rock there by others. State what he said.

Ans. I do not know whether they belonged to Cincinnati or not, but there was men there with boats quarrying stone, and Gen'l Taylor tried to get assistance to drive them away; he wanted me to go, but I would not, and he observed we would want all the rock there for ourselves.

By same. Did he claim the rock as his property, or as one of the citizens claiming those rocks for the use of the citizens?

Ans. He claimed them as one of the citizens, for the use of the city in common.

By same. How far out in the river were those persons getting rock?

Ans. I would suppose about half way over the river, or a little more.

By same. Where you have seen the rock taken from would you say it was in the esplanade or bed of the river?

Ans. In the bed of the river.

By same. Have you ever known rock quarried there by persons for sale? If so, state what you know about it.

Ans. Yes, I have; I know that David Spear quarried rock there, and sold them in the water, and my impression is that they were hauled away by John Boyd.

By same. State whether the rock that were quarried or taken out
[356] were generally taken from where it was dry, or were generally got under water?

Ans. The most of the rock that I have seen quarried, was taken from under the water, where the water was about knee deep.

By same. How long since rock have been quarried there?

Ans. I do not know; not within ten or twelve years, to my knowledge.

By same. While you were navigating or running the river, did you ever pay wharfage to any person for landing, laying at, or using the esplanade in front of the lots of Newport?

Ans. No, I never was asked for wharfage.

By same. State what point has been the ferry landing at Newport, since your knowledge of it.

Ans. When I first came to Newport, the ferry from this side landed a little below Columbia street, and the ferry from the other side landed at York street; old man McClure landed the ferry from this side at Monmouth when I first knew the place, but shortly after I came here, the ferry came up to York street, and it has remained at York street ever since; it is the only wharf ever improved for a ferry.

By same. Have you ever known of the ferry from Newport occupying any other point or place for a landing since that time? If so, state where.

[357] Ans. Not as a permanent landing; it has landed at East row on a bar, when the water was low.

By same. How far was the bar out from East row where the ferry-boat landed during the low water you speak of?

Ans. From one hundred to one hundred and fifty yards; may be more or less.

By same. How long at a time did the boat use that place of landing, and how often has the boat been compelled to leave the foot of York street, and land elsewhere on account of low water, or other cause, within the last twenty years?

Ans. Sometimes for three or four weeks; or may be for six weeks; I do not know how often it has had to leave York, but not very often.

By same. State how the water is generally along the front of the Town of Newport in a low stage of the river, and if there are any channels from the Ky. towards the Ohio shore; and if so, where? State also where the channel of the Ohio river runs in front of Newport.

Ans. It is pretty low except at the foot of York street; and a boat drawing from 20 to 28 inches water could land at almost any time at York; a boat to draw 20 inches could land at any time for [358] the last 8 or 10 years; the channel of the river is on the Ohio side, opposite Newport.

By same. Are there any other points from the esplanade out to the channel of the river, other than the foot of York street, where boats could come in from the channel, and land in very low water?

Ans. From York to Monmouth is the best water and the only place it could come in, in extreme low water; in ordinary low water they could land at East row.

By same. Do you know when either of the Doxons kept the ferry from Newport? State how long each of them kept it and where it was.

Ans. I know that both of them kept it; I cannot say positive at what time George Doxon kept it; he run the Echo in the year 1838 or '39, or about that time in the lower trade, but I cannot recollect dates, but it was about the time I went to Texas, which was about thirty-seven.

By same. Did you ever know of his collecting wharfage when he kept the ferry?

Ans. Never.

By same. When was the first wharfage collected at Newport, and by whose or what authority?

[359] Ans. Doughty was the first wharf-master they had here; he was appointed by the trustees of the town; it has been fifteen or twenty years since, but I cannot recollect rightly, and Stricker was the next that I know anything about.

By same. Were you acquainted with Gen'l James Taylor, dec'd,

and did he ever act as one of the trustees of Newport, or hold any other office in the Town of Newport, within your knowledge?

Ans. Not that I know of.

By same. State whether you was ever trustee of the Town of Newport, or held office in the town? if so, how long?

Ans. I was trustee one year, but am not certain at what time; but I think it was between 1816 and '20.

By same. State whether there were any improved roads or means of getting down the bank through the esplanade to the river before the construction of the paved streets before spoken of by you? if so, state what.

Ans. There was a dug road down the bank.

By same. Where was that dug road, and who made it? State, also, whether you know of any improvements being made at the foot of Monmouth street, in an early day; if so, what?

Ans. At the foot of York street; I do not know who made it, but I suppose the ferryman or wagoners made it. Monmouth [360] street was graded and paved, 14 or 16 feet wide, about the years 1816 or 1820, but it washed away in a short time. The improvement was made by the trustees of Newport.

By same. State whether or not the population of Newport has increased much within the last ten or fifteen years, and whether there has been much increase in the county back of Newport.

Ans. The population has trebled itself in the last ten years in the City of Newport. There has been a great increase in the population back of Newport.

By same. State whether there is much trade or commerce between the Port of Newport, in Kentucky, and Cincinnati, Ohio.

Ans. Yes, there is a great deal of trade between the two cities.

By same. State whether the trade of the back county crosses the Ohio river to and from Cincinnati.

Ans. It crosses at Newport.

By same. State what were the means and accommodations for crossing between Newport and Cincinnati, before the Commodore commenced running.

Ans. There were very bad accommodations in busy times; the wagons had to wait, and the foot passengers, in danger of being [361] run over or struck against the tars of the wagons.

By same. State how the esplanade or strip of ground, between the lots and the river, has been held, used, &c., and who has always been considered the owner thereof, since your knowledge of the town.

Ans. It has been held for the common use of the citizens generally, and has been used for hauling out lumber on, and land at, to stick up lumber on, or there has been the time when lumber was stuck on it, and they used to pile stone on it. The trustees have taken the control of it, and exercised control over it. I never

knew any opposition to their control over it until lately, since the year 1811.

By James Taylor. State who was running the ferry when you came to Newport?

Ans. I think General Taylor's negroes.

By same. In what year was this, and how long was it run by Taylor's negroes?

Ans. In the year 1811; but I cannot say how long it was managed by them, but some three or five years.

By same. Who run said ferry prior to the year 1811?

Ans. James McClure, I think, run it about 1806, but I cannot be certain at what time it was.

[362] By same. For whom did McClure run, and how long did he run it?

Ans. I do not know.

By same. Was McClure a trustee of the Town of Newport while he was running it?

Ans. I do not know.

By same. Who was the first white man who run said ferry after your residence in Newport?

Ans. The first I recollect of was Massey.

By same. How long did Massey run it, and who succeeded him?

Ans. I do not know how long, and my impression is, he was succeeded by Doughty.

By same. How long did Doughty run it, and who succeeded him?

Ans. I do not know how long Doughty run it, and I think he was succeeded by Rugg.

By same. How long did Rugg run it, and by whom was he succeeded?

Ans. I do not know, but it was but a short time, and I think he was succeeded by George Doxon.

By same. How long did George W. Doxon run it, and by whom was he succeeded?

Ans. I cannot tell the time, but he was succeeded by John Doxon.

By same. How long did John Doxon run it, and by whom was he succeeded?

Ans. John Doxon run it for several years, and was succeeded by Robert Air.

By same. How long has Air run it, and under whom?

[363] Ans. I do not know how long, but several years. I never saw any lease, but have heard that he leased it from General Taylor.

By same. Was you in the habit of crossing the ferry frequently, prior to the year 1811?

Ans. No. I only crossed occasionally, once in two or three weeks, and sometimes longer.

By same. Who run the ferry at the times of your crossing, prior to the year 1811?

Ans. Taylor's negroes, after McClure gave it up, as far as I know.

By same. Under whom did McClure, and Massey, Rugg, Doughty, and two Doxons run it?

Ans. I do not know, but rumor was that they got the ferry from Taylor.

By same. From what street was the ferry run, when you crossed it, prior to the year 1811?

Ans. My first recollection in crossing it, was from Monmouth, and after that it was on no street, but below Columbia, opposite a house that negroes lived in.

By same. Were the negroes that lived in this house, the negroes that run the ferry?

Ans. Yes.

By same. State if you are connected with McClure, and whether you heard him say under whom he run the ferry.

[364] Ans. I was not connected with him at that time, nor did he ever mention to me under whom he run the ferry.

By same. Did you know Jacob Fowler, and is he dead or living?

Ans. I knew him well; he is dead.

By same. Do you know of his running this ferry?

Ans. I do not recollect anything about it.

By same. Do you know of Massey's building a cabin, or frame, wooden house? if so, state where it was erected, and whether the ferry-hands resided in it?

Ans. I know that he did. It was on the esplanade opposite to Barlow's tavern; a small shanty.

By same. Who run the ferry in the year 1830?

Ans. I cannot tell.

By same. When was the ferry removed up to York street?

Ans. Sometime between the years 1811 and 1813.

By same. Did not the two Doxons frequently run the ferry during the summer months, from East Row?

Ans. Never. Only when they could not get in at York street.

By same. During the summer and fall of 1838, was there not a memorable draught? and was not said ferry run from East Row, for a period of six or eight weeks successively?

[365] Ans. I do not know particularly, but when the water was low we had to go up there, but I cannot recollect dates.

By same. Did you know of James Walls running said ferry, and when?

Ans. I know that he run it, but do not recollect the time.

By same. Has any ferry-boat ever been run by any one except Taylor, and those claiming under him, except the Commodore?

Ans. I do not know who they run the ferry under, only from report.

By same. How long did the market-house, erected on the esplanade, remain? and has not said market-house been removed for more than thirty years?

Ans. It blew down; but I cannot say how long, but for upwards of twenty years; it was sold and taken away. I do not think it has been there since 1824, but I cannot be certain.

By same. How many men do you personally know of quarrying rock from the river in front of the esplanade?

Ans. Baxter, Herry, Lindsey, are the only names that I recollect of this time, and they are all dead.

[366] By same. Who was ferryman when General Taylor wanted you to aid in driving off certain persons who were quarrying rock in the river?

Ans. I do not know, but it is my impression it was Adam.

By same. Please state in what consisted the bad accommodations of the ferry?

Ans. They run but one boat at times, and I have seen four or five wagons wait at a time; and once ladies got their clothes stuck up so, that they were compelled to return home by *pass is* through the wagons.

By same. How long has it been since aft cabins have been put on ferry-boats?

Ans. The Covington ferry-boat, last summer, was the first that I saw of it; but in New Orleans I noticed it about fifteen years since.

By same. How many ferry-boats have they at Covington?

Ans. They have two at the upper ferry, and one at the lower ferry.

By same. Is the Commodore now running, and from what street?

Ans. She was running, when I saw her last, and landing at Monmouth street.

By same. When did you last see her, and when did you cross on her last?

Ans. I do not know when I saw her last, but I believe it was on [367] Sunday I crossed on her last, coming from the other side.

Direct resumed. When was the shanty, for the ferryman you speak of, built? Did a family ever live in it, and what for building was it, and how long since it was removed?

Ans. I cannot tell the date, from 1814 to about 1819. I think there never was any family lived in it, but the ferryman, a black man, slept in it. It was about ten feet square.

When the witness speaks of East Row, it is understood at the bar.

By same. Who was running the Commodore when you crossed at the time you speak of?

Ans. John Boyd appeared to be acting as if he was running her, and he told me he was.

And further saith not.

SAMUEL PERRY.

[Deposition of Thomas Clephane.]

The deposition of Thomas Clephane, taken at the same place, on the 8th day of May, 1854, to be read in evidence in the same cause, who deposeth, &c.

Question by defendants' attorney. State when you first came to Newport, and where you have resided since, and now reside.

Ans. I came to Newport in the year 1819, and resided here some three or four years, and then went into the country about six years, [368] within twenty miles, and about twenty years within three or four miles, and the balance of the time in Newport.

By same. What has been your knowledge and acquaintance with Newport during that time?

Ans. I was generally acquainted with the people during that time; most of the old settlers.

By same. Do you know of there being a stone-quarry in the esplanade, fronting the lots, or in the river? if so, state your knowledge thereof, and whether the quarrying of rock in front of the Town of Newport was considered a private or public right.

Ans. In 1819, when I came here, the river was lower than ever I saw it since. They were quarrying stone in the river, about thirty yards from the bank. All that I knew, it was a public right, every person went and took them, so far as I knew, and I never heard any objection to it. I was at work for General Taylor, he was hauling stone from there, and Mayo and Lindsey and others, for what I know.

By same. What use has been made of the esplanade or strip of ground between the lots and the Ohio river, since your knowledge of it, and how has that ground been considered and used, whether [369] as a public or a private ground?

Ans. It was always considered public ground until lately, but I did not know much about it; I never heard any claim to it, but the general understanding was, that it was public ground; the town improved the wharf; there was a market house on it, built by the town, as I understood it; it was built before I came here; it has been used by the public for hauling out on and landing boats, ever since I knew it.

By same. State whether you ever knew of any wharfage being demanded or required of persons for landing or hauling out on the esplanade.

Ans. I have heard of it, but know nothing about it only from hearsay; I heard that Stricker collected wharfage as wharf-master, but it is all hearsay; I know nothing of my own knowledge.

By same. Do you know anything of ferries having been run from the Ohio side to this, many years ago, by persons other than Gen'l Taylor, or any of his agents? If so, state what.

Ans. I have paid ferriage from the other side to this, and have paid both ways to different persons, stating that they could not charge but from one side of the river.

[370] By same. How many years did that state of affairs continue?

Ans. I cannot tell.

By same. Where did the boats from the Ohio side land on this?

Ans. At the mouth of York street, except in low water; then I landed above.

By same. Where was the landing of Taylor's ferry on this side, at the time you speak of?

Ans. At York street.

By same. Where has been the main landing for the ferry, since your knowledge of it?

Ans. At York street.

By same. Where have the boats, run from the Ohio side, landed on this side, since your knowledge of it?

Ans. At York street.

By same. State whether or not the public have used the same landing during that time.

Ans. I believe the public have landed boats there, or close by, and hauled up that street, leaving room for the ferry.

By same. State whether or not there has been any increase of population in the Town, now City, of Newport, or in the country around, since your knowledge of it; if so, state it.

Ans. There has been an increase, but I cannot tell the extent of [371] it; twenty years ago, there was not two thousand inhabitants in Newport, in my opinion; there is about nine thousand inhabitants at this time, as I have understood from the general talk; there has been a considerable increase through the country within a few years, but the amount I know nothing about.

By same. Where is the place of trading and commerce, buying, selling, &c., by the people of Newport and the back country, for a considerable distance out?

Ans. In Cincinnati generally.

By same. Where is the point of crossing the Ohio river in going to and returning from Cincinnati?

Ans. At Newport.

By same. State what you know of persons residing in Newport, carrying on business in Cincinnati, Ohio, or engaged in trade and commerce on that side of the Ohio river; and to what extent it is carried on?

Ans. Most of the persons dealing in merchandise gets it from Cincinnati, and most of the things we get to live on comes from there, but to what extent I cannot tell.

By same. Where do the farmers, gardners, and others living back [372] of Newport, and within, say twenty or thirty miles, dispose of their produce, &c., and get supplies from, as a general thing?

Ans. At Cincinnati.

By same. Where is their place of crossing the Ohio river?

Ans. At Newport.

By same. Is there much trade and commerce, and carrying carried on between the country back of Newport and Cincinnati, Ohio?

Ans. There is good——of trade, but I cannot say how much.

By same. State whether there are many persons living in Newport that labor, or do business in Cincinnati.

Ans. I would say there was a great many. And further sayeth not.

THOMAS CLEPHANE.

[Deposition of R. D. Hayman.]

The deposition of Robert D. Hayman, taken on the 8th of May, 1854, who deposeth, &c.

By def'ts' att'y. How long have you known Newport? and state how the esplanade or strip of ground between the lots and the river have been used, and whether as public or private ground.

Ans. I have known Newport since March, 1815; I think it has been used as public ground, as far as I know.

[373] By same. State whether the same has been improved, or any part thereof, and who by?

Ans. There has been improvements made by trustees of Newport; the first was done partly by subscriptions and donations; the balance by the trustees; James Taylor, Sen. paid two hundred dollars towards it, as I understood; York, Monmouth, Saratoga, and East Row streets, have been improved mostly at the expense of the trustees; the landings I speak of. The trustees and Council have always claimed the right of wharfage, and have exercised that right by establishing ordinances on that subject, and I think and am very nearly certain that they have collected wharfage; I think in the years between 1830 and 1840; what has been done on that subject in the last five years I cannot say, as I have been absent part of the time; Col. James Taylor, in the last two or three years, refitted and graveled the landing at the foot of York street; it was done whilst I was in the city; the city have also made, and by and with donations made by individuals, improved the esplanade between the streets, by driving piles and boarding and paving, the object of which was to prevent the banks on the esplanade from washing off by freshets.

[374] By same. State what you know of a part of the esplanade being improved by one Scott; when and how that improvement was

made, what became of it, and who paid Scott therefor, and how the matter was settled?

Ans. Mr. Scott improved or graded and paved the esplanade between Cabot and Columbia streets, and collected the pay for the same by a suit in the Circuit Court, said improvements having been washed away before they were quite finished; the Council supposing they were not liable for the damages, would not pay until compelled to do so by law; the suit was brought and sustained against the City Council; according to my recollection, the said improvements were made some eight or ten years since.

By same. Do you know anything of a market-house standing on the esplanade? If so, state it, the time, &c.

Ans. There was a market-house on the esplanade; I think in the year 1815, and was used as such since that time; at what time it was built I cannot say; if it had have been down since that time I think I should have recollected it as I have all, or pretty near all, the [375] houses and especially the public houses; the market-house was blown down; and since that time, or perhaps most of the time until the present market-house was erected, Messrs. Farrar and Morledge kept a house where they sold beef, they having obtained leave to do so by the City Council; it was made as a public market-house.

By same. Do you know of stone being quarried or taken out in front of the Town of Newport? If so, state where they were so taken out, who by, and how long since.

Ans. Stones were quarried by several, perhaps by many persons; I had some fifty or one hundred perch quarried and taken out of the river in front of the town; I think I had mine quarried in the year 1829; stones were so taken since and before that time; they were quarried out of the bed of the river, near the Newport shore, in front of the town.

By same. Was the the right of quarrying in front of the town claimed a private or public right? Was it a general thing, or limited to a few persons?

Ans. I supposed, at the time I quarried stone there, that the right belonged to the public, that they were free as the water that floats above the surface. I have heard, since that time, that Gen'l [376] James Taylor claimed the right to all the privileges thereto belonging.

By same. Did you ask permission of any person to get stone there, or were you interrupted by any person, in doing so, claiming them? or do you know of anybody else asking permission of getting stone there, or being interrupted in so doing?

Ans. I was not so interrupted; nor did I ask or obtain leave from any person; nor do I know of any other person being so interrupted, or having obtained leave so to do.

By same. State what you know of persons, other than those connected with the ferry run by Taylor, having been engaged in the business of ferrying from the Ohio side of the river to the esplanade in Newport, some years since.

Ans. There have been several persons engaged in that business: Mr. Wm. Smith and Mr. Farran, and perhaps Mr. Walls was also engaged at the business, at different times. Mr. Smith, I think, in the year 1820, or near that time. Farran and others since that.

By same. State what you know of either of them taking passengers from the Kentucky side to the Ohio side.

Ans. I have frequently; and have known others to cross others [377] with them, without charge.

By same. Where did these ferrymen from the other side land on the Newport side?

Ans. They landed their passengers at Monmouth street, sometimes below, at York, and sometimes below York street.

By same. What was the population of Newport, say fifteen years ago, and what is it now? What has been the increase of population in the country around, back of Newport?

Ans. In the year of '39, the population was something near fifteen hundred or two thousand; it is now something near eight or ten thousand; the population in the country is also much increased.

By same. State where the people of Newport, and the country, say twenty or thirty miles back, do most of their trading, sale of produce, purchase of merchandise, &c., &c.

Ans. The most of the trading is done at Cincinnati, some at Newport, and the other places in the country; but most of the trade is done at Cincinnati.

By same. Where do the people cross the Ohio river, in carrying on such trade?

Ans. Most of the crossing is done at Newport; there are other ferries in the county; what amount of crossing may be done at them I cannot say; but the most of it is done—Newport, I think.

By same. Taking into consideration the population of Newport, [378] and the country back, the location of Newport and contiguity to Cincinnati, what is the proportion of mills, factories, &c., in Newport?

Ans. There is some considerable manufactories in Newport; none done in the country that I know of; there are some mills in the country, grist-mills and saw-mills; the proportion is largely in favor of Newport, leaving Cincinnati.

By same. Is the proportion of commercial or manufacturing establishments to the population in Newport, large or small?

Ans. The manufacturing interest is the largest by much.

By same. What do you mean by the manufacturing *interest?* Explain.

Ans. By manufactures, I mean such establishments make goods and implements of use.

By same. State whether or not there are many or few persons living in Newport that are engaged in trade, commerce, or business in Cincinnati.

Ans. There are many persons engaged in business in Cincinnati; there are also many steamboat men, and mechanics, and some laborers, that live in Newport and work in Cincinnati.

By same. Have you held office in Newport? if so, state how often, and what offices?

[379] Ans. I served as a Justice of the Peace; served seven or eight years in the Board of Trustees and Council, and have served two years as Mayor of the City.

Question by J. Taylor. Has there been any market-house on the esplanade, or common, within the last twenty-five or thirty years?

Ans. I cannot say at what time the market-house was blown down.

By same. When did you see it standing last? Give the year.

Ans. It was standing some years after 1815; I cannot say how long.

By same. Did it stand more than three or four years?

Ans. I cannot say.

By same. Who was the owner, and running the ferry from Newport to Cincinnati, when you came here, in 1815?

Ans. Gen'l Taylor, by his hand from this side of the river, if my memory serves me right.

By same. Was the ferry run by Taylor for the benefit of the public, or for his own emolument and use?

(This question objected to by defendants' attorney.)

Ans. The public was benefited by ferry, and Gen'l T. in a pecuniary point of view, I supposed.

By same. During the time you knew the ferry, in landing the skiff, flats, and other boats, were the ferrymen confined at one land-[380] ing place, or have they used many places on the river shore in front of Newport?

Ans. They have not been confined to one landing place; but the ferrying has been done mostly from the foot of York street.

By same. Has not Taylor and his lessees of the ferry used any part of the river front of Newport, in landing boats, and has not this landing been varied by the stage of the water, and has not the high and low water changed the place of landing sometimes?

Ans. The ferrying has been done from East Row, in low water; sometimes from Monmouth, from the same cause, and changed to suit the stage of water in the river.

By same. Did you ever hear that either Taylor or his lessees of the ferry paid to the City or Town of Newport anything for running and landing his ferry-boats at these places?

Ans. I never have.

By same. Who made the late improvement of the wharf at York street? State all you know about it.

Ans. There was a wharf made, as I stated above; it was too steep, and was perhaps somewhat out of repair. Col. Taylor altered the grade, and paved or graveled it, and thereby improved the landing, [381] and, I think, at the expense of Gen'l Taylor's heirs.

By same. Before Taylor made the improvement of landing on York street, was there not a vote taken by the town, whether they should aid or not, and how did they vote?

Ans. I think there was a vote taken; how the question was taken, I cannot say, but the vote was a negative one, or against the city making the improvement.

Direct resumed. When you say the ferry-boat of Taylor has landed at East Row, do you mean at the improved wharf? or was it at a bar out some distance from the end of the wharf?

Ans. I believe the ferry-boat was *near* landed there, unless it was when the water was very low, and then there was a bar between the wharf and the place where the boat landed.

And further sayeth not.

R. D. HAYMAN.

[Deposition of A. F. Miller.]

The deposition of A. F. Miller, taken on the 29th day of May, 1854, who deposeth, &c.

Question by defendants' attorney. State how long you have been acquainted with Newport, and where you now reside.

Ans. I came to Newport in May, 1835, and have resided in Newport since that time.

[382] By same. State what you know of the improvements being made on the strip of ground lying between the lots and the Ohio river in Newport. What improvements have been made, who by, and at what times was the work done?

Ans. The piling, below Mayo and Cabbot, was done by the City Council in part, and part by private subscription, from what I understood; and also the piling between York and Monmouth; I cannot say at what time it was done. There was some grading and paving done by Scott, between Cabbot and Columbia street, which the City Council paid for after being sued. The paving slipped down into the river by the high water. I do not know what become of the stone, except what Walls got by permission of the Council, to preserve the esplanade in front of his property.

By same. Since your knowledge of Newport, state whether said strip of ground has been used as a public or private landing. State, also, whether or not, steam-boats, flat-boats, rafts, and all kinds of

water-crafts have been in the habit of landing there and using the ground.

Ans. It has been used as a public landing, with the exception of the ferry-landing. Colonel Taylor has always claimed the exclu- [383] sive privilege of landing there; all kinds of water-crafts has been in the habit of landing and using the ground.

By same. State what point has been the ferry-landing since your knowledge of the town?

Ans. The greater portion of the time it has used the foot of York street; in very low water it lands at East Row, heretofore.

By same. When you speak of the ferry-landing in the answer next before the last, what point had you referred to?

Ans. The foot of York street.

By same. State whether there has been much increase in population in Newport, and the country back of Newport, within your knowledge?

Ans. There has been a great deal; the town has increased from about 1800 to about 8000; in the country back it has increased considerably, but not in the same proportion.

By same. State whether there is much or little trade, traffic, transportation, and commerce, between the State of Kentucky, and the State of Ohio, at the points of Newport and Cincinnati?

Ans. There is a great deal of crossing during the summer season; there is a great many going over with marketing every day; there is other crossing. The manufacturing company at this place [384] get the most of their materials from Cincinnati, and take the manufactured article there; there is a good many pork-barrels and lard-kegs made in the back part of the county, and taken to Cincinnati. The dry-good merchants of Alexandria get their goods across at this point.

By same. State where the merchants of Newport cross their goods over the Ohio in transportation?

Ans. At this ferry.

By same. State whether you have acted in the capacity of Assessor of Campbell county, and whether, as such, you took a list of the property of the plaintiff, James Taylor, or of the estate of General James Taylor, deceased, and whether the esplanade, or any part of the strip of ground between the lots and the Ohio river, was listed by him; and state what took place when called on by you to list his property, as to said esplanade, or the said strip of ground; and how many years you have assessed the property in Campbell county?

Ans. I have assessed the property of Campbell county for three years, as county assessor, and the property of the city for two years. I called on General Taylor regularly each year, for a list [385] of his property; after giving in a list of all his property, except the esplanade, I spoke to him in regard to that property,

and told him I was going to list it for taxation, which he objected to; I told him I was not satisfied that I could do it legally, but that I would get the opinion of the Attorney-General, at Frankfort, in regard to the matter; I immediately wrote to Thomas S. Page, and requested him to see the Attorney-General. He wrote to me in a few days, that he was not able to decide the case himself, and the Attorney-General was from home, but on his return, he would give me the information. He wrote me again, but the contents I do not recollect, as I have not got the letter. Then there was a conversation took place between Colonel Taylor and myself, in regard to the ferry, relative to the proper owner. Colonel Taylor told me he owned the ferry-franchise, and that it was exempt from taxation, as it was a public benefit. The esplanade the City Council exercised jurisdiction over it.

By same. Have you been Assessor for the Town, now City, of Newport? if so, when were you? State whether you called on Colonel Taylor, the plaintiff, as Assessor, and whether he listed the strip of ground above-mentioned, for taxation for city purposes?

[386] Ans. I was Assessor for the city in 1853 and 1854. The esplanade was not listed by Colonel Taylor for taxation.

By same. State what reasons, if any, were given by plaintiff, Taylor, why he would not list that property for taxation, at any of the different times you called on him.

Ans. In the first inst., I stated the conversation that took place between him and me, in listing for the State; in listing for the town, I considered the opinion of the Attorney-General satisfactory, and said nothing to him about it.

By same. At the time you called on him, as above stated, state whether the plaintiff, Taylor, claimed the strip of ground aforesaid, himself, as private property, or whether he stated it to be public property belonging to the Town of Newport.

(This question objected to as a leading question by plaintiff, Taylor.)

Ans. There was nothing said in regard to that, further than what is in a former answer, that the Council exercised jurisdiction over the esplanade.

Cross-examined by plaintiff, Taylor. What was the substance of the opinion of the Attorney-General, in regard to the right to tax said ground?

[387] Excepted to by defendants' attorney.

Ans. I received a letter from Thomas S. Page; he said the Attorney-General's opinion was, that the land was not taxable, but would admit of legislation on it.

By same. Was not Thomas S. Page Auditor of State at that time, and did he not send you a printed circular, directing what property to assess for taxation?

(Objected to by attorney for defendant.)

Ans. He was Auditor of State at the time, and sent me a printed circular for me to be guided by, or defining my duties.

By same. Did I not inform you, at the time of your application to me to list, that the title to the property was in my father's heirs.

Ans. The ferry-right you claimed, as belonging to the heirs, but I have no recollection of anything being said relative to the title of the esplanade.

By same. Who made the improvements of the landing at York street in 1851, by grading, McAdamizing, and graveling the same?

Ans. In 1851 I worked in Cincinnati, and was in Newport but a short time, but understood that there was improvements going on there which you paid for.

[388] By same. Did not the town, by a vote, refuse to make any improvement of the landing at York street, on the ground that it was Taylor's property?

Ans. I believe they did.

By same. Has not Taylor and his lessees claimed the right to use all parts of the ground in front of Newport, to land their ferry-boats?

Ans. I never knew them land at any place but York street and East Row, for the purpose of ferrying.

Direct resumed. Have you now the letter received by you from the Auditor? if so, please make it a part of this deposition.

Ans. I have the letter of the Attorney-General, sent to me by Thomas Page, and here file it, marked A A.

By same. Do you know, of your own knowledge, that James Taylor, the plaintiff, made any improvement at the foot of York street in 1851?

Ans. I do not, only from what I have heard.

And further sayeth not.

A. F. MILLER.

The letter referred to in the foregoing deposition as exhibit A A, is as follows, viz:

[Letter of James Harlan.]

A. F. MILLER, Esq.—I send copy of Attorney-General's opinion.

Yours, &c.,

THOS. S. PAGE, Auditor.

Frankfort, 11th May, 1853, viz:

[389] ATTORNEY-GENERAL'S OFFICE, May 10th, 1853.

THOMAS S. PAGE, Esq., Auditor:

SIR:—The question submitted by you for my opinion is, whether a ferry is subject to be listed for taxation under the Revenue Laws

of this State. A ferry is a franchise, and the estate therein is denominated an incorporeal hereditament. A franchise is a grant from the government, and vested in individuals. They are usually created for the public benefit, and not for the individual advantage of any one. The most common are the grant of a right or privilege of making roads, bridges, *establishing ferries*, and taking tolls for the use of the same. "A franchise is not property, in a legal sense, and is not subject to taxation, unless by express law. It would be competent for the General Assembly to impose a tax on the *privilege* of transporting passengers across the navigable streams of this Commonwealth, but not having exercised the power, the owners of ferries are not liable to be taxed for the exercise of the privilege.

The boats, their apparel, and tackle, used for that purpose being *property*, are liable to taxation under the "equalization law."

I am very respt'y, &c.,

J. HARLAN, Att'y Gen'l.

[Deposition of Jno. Boyd.]

[390] The deposition of John Boyd, taken on the 29th of May, 1854, who deposeth, &c.

(The deposition of John Boyd is objected to by J. Taylor, as being interested, as he is now running the Commodore.)

Question by defendants' attorney. State how long you have known the Town of Newport, and what was the number of inhabitants when you first knew it, and what is the population now.

Ans. We came here in the year 1817; I cannot say what was the number of inhabitants, but I do not think there was over one hundred families, to the extent. I cannot state positively what the population is at this time, but about 8000, I believe, or a little over.

By same. State whether the country back of Newport is thickly or sparsely settled, and whether the population has increased much in the country back, within the last five years?

Ans. There is two-thirds more than there was six or seven years ago. The country is pretty thickly settled back of Newport.

By same. State whether the inhabitants of Newport, and the country back, have a general point of sale for their live-stock and produce, &c., and whether they have a point where they generally [391] make their purchases of dry goods, groceries, and other articles of trade, commerce, &c., and what place that point is?

Ans. Cincinnati is the great place of deposite for all the country back, the people believing they can do better there than here. Cincinnati is the great point where they buy and sell.

By same. Is the trade and commerce and transportation back and forth between the States of Kentucky and Ohio, at Newport and Cincinnati, great or small?

Ans. I consider it very considerable—pretty extensive.

By same. State what it consists in, in part or in whole, as you now can call to mind.

Ans. In the product of the country, and travel and commerce of all descriptions.

By same. Where do the merchants, grocers, and families in Newport and the country back, obtain their supplies, and where does the trade cross the Ohio river?

Ans. They obtain them from Cincinnati; groceries, flour, dry goods, and everything of the kind, and go across here at Newport to get them.

By same. State whether droves of live-stock pass this point from one State to another; and if so, what kind of live-stock?

Ans. There is hogs, cattle, horses, mules, and sheep passes here, going from one State to the other. The Kentucky stock-raisers [392] drive stock hogs from Indiana and Ohio, and fatten them here, and drive them back to the Cincinnati market.

By same. State whether the steamer Commodore is adapted, in her construction and arrangement, to the carrying trade between the points of Cincinnati, Ohio, and Newport, Kentucky, and fitted for carrying passengers, live-stock, freight, &c.?

Ans. I do not think there could be a boat *build* to suit the trade better.

By same. State whether the strip of ground between the lots and the Ohio river in Newport has been used and claimed as private or public property. State what acts of ownership the Town, now City, of Newport have exercised, if any, over that ground since you have known it.

Ans. It has been used and claimed as public property, and the town has exercised control and ownership over it ever since I knew it. The first improvement ever made on it was a market-house, that I recollect of. The market-house stood in front of the property belonging to John McClure's heirs. They have went on improving one wharf after another, and *spiling* and carrying the streets down to the river, one after another, as they were able, and paving them. They [393] have drove *spiling* most all the way up the esplanade, to protect it between the wharves. The town has assessed and collected wharfage, I know, for there was money paid to me to pay the wharf-master.

By same. State whether steamboats and other water-craft have used the said strip of ground for purposes of landing, taking in and putting off passengers, freight, &c., and how long such use has continued, to your knowledge.

Ans. Flat-boats, wood-boats, steamboats, and barges have landed at this esplanade, in loading and putting off loading, and passengers, since I have known it.

By same. What point has been the regular landing of the ferry

from the Newport side, at Newport, during your knowledge of it?

Ans. York street has universally been the landing, since my recollection, except in very low water; then the ferry landed at the bar opposite East Row.

By same. Have you known of ferries being run from the Ohio side of the river, independent and disinterested with the ferry run by Taylor, prior to the plaintiff, Robert Air, running the ferry at Newport? If so, state what ferries were so run, and where they landed on the Kentucky side.

Ans. There has been ferries run from the other side, nearly ever [394] since I have known the place, disconnected with the ferry run by Taylor. They landed from Monmouth down on the esplanade; but I cannot tell any particular point.

By same. State what you know of rock being quarried in front of Newport, when quarried, and where?

Ans. In the fall season, when the river was very low, it was customary for the citizens of Newport to turn in the river and get rock. I cannot state the particular year, but whenever the river was low enough; for whenever I could get them I have been at it. I have got rock from Columbia street down to the mouth of Licking, from the shore, and half-way across the river. I never got many above Columbia street. I have hauled and boated rock from them, and sold them. I made it a business, two or three seasons, boating rock to Cincinnati.

By same. Were the rock considered the private property of any particular person, before they were got up, or did you ask the privilege of quarrying there?

Ans. The rock was considered public property; most every person went and got it without asking leave. Gen'l Taylor once told [395] me that I ought not to take them to Cincinnati, but I paid no attention to him, as I did not think he had a right to say where I should take them.

By same. State whether you have been a trustee or councilman of the Town, and now City, of Newport, where you now reside?

Ans. I have been a trustee of the town, and also a councilman of the city. I now reside about one and a half miles back of Newport; but I am not either now.

By same. State the location, as near as you can, of the market-house that was on the esplanade, and how far it was out from the front of the lots towards the river?

Ans. From my recollection the entire market-house was outside from the street, between the street and the river, opposite the property of the heirs of John McClure, below Monmouth street.

By same. What were the means and accommodations for crossing and transporting of passengers, stock, freight, &c., at Newport,

before the running of the steamer Commodore, compared with the demands of the public?

Ans. I think they were very indifferent; they were not, in my opinion, as they ought to be; they have improved one-half since the Commodore commenced running, and are none too good now.

[396] By same. Do you mean that the running of the Commodore has made the conveniences one-half better, or that the boats, &c., of the plaintiffs have been improved; and what improvements have been made to which you refer?

Ans. The boats of the plaintiff have been improved both in comfort, accommodation, and time, at least one half, by building additional cabins on both of the boats, and running them both constantly and actively; it has been done in the last month, since I have been running.

By same. State whether the platform of the ferry landing on the Newport side of the river has been improved, also the platform on the Cincinnati side.

Ans. There has been no improvement on the platform on the Newport side, that I know of, but on the Cincinnati side there has been an improvement.

Adjourned until to-morrow morning 8 o'clock, 30th May, 1854.

J. B. PAYNE, Examiner.

The deposition of Jno. Boyd, continued 30th May, agreeable to adjournment.

By same. State the extent of that part of the strip of ground between the lots and the Ohio river, which is designated as the [397] esplanade, its length up and down the river, and width, as near as you can.

Ans. The esplanade, as I have always considered, run from Monmouth street, down to the point on Licking, on the Ohio river; the width was once about 150 or two hundred feet, in my opinion, and is now to the water edge 150 feet from the street.

By same. State what you know of any donations made to the Town of Newport by Gen'l Taylor, dec'd, to be applied to or assist in making wharves to the Ohio river? State all you know about it.

Ans. At the time we built York street wharf, Gen'l Taylor subscribed to the town $200 towards it, and $200 to Monmouth or Columbia, I am not certain which; the town or the contractor once had a difficulty with the General about one of the subscriptions; I do not recollect which; they had to take hay and feed for it.

By same. In what way were the wharves improved, and what was the cost of making each wharf? State as near as you can.

Ans. They were improved by cutting down the bank at the top some four or five feet, and filling in the center some 12 or 15 feet [398] by hauling the dirt from different parts of the town and filling out in the river and graveling, and then paving with stone some

nine inches deep, making in the whole cost some seven or eight thousand dollars each, agreeable to my impression, but I cannot say positive.

Cross-examined by pl'ff, Taylor. You state that the ferry-boats of Capt. Air have been constantly and actively running since you commenced running. State what ferry-boat you are now running, and from what point in front of the Town of Newport?

Ans. I am running the Commodore as a licensed ferry-boat from Cincinnati; running from Cincinnati; we leased a wharf from Dadsworth joining Air's landing, and landing and unloading at Monmouth street, on the Newport side, claiming no other privilege.

By same. Is not the Commodore the same ferry-boat run by Wolff and others, and which was enjoined by the Judge of the Circuit Court of Campbell county in January last?

Ans. I suppose she is the same boat.

By same. Have you any doubt about her being the same boat?

Ans. I was not present when the injunction was served, and do not know it to be the fact only from hearsay.

[399] By same. Did you ever cross on the Commodore when it was run by Wolff and others? and do you not know positively that this boat you are now running is the same boat that Wolff and Conway run?

(The question objected to as leading question, by def'ts' att'y.)

Ans. I crossed on the boat while run by Conway, and know it to be the same boat he run.

By same. Are you not landing now at the same point which the Commodore was when she was enjoined by the court?

(This question objected to because leading, and upon new points.)

Ans. I do not know where she was when she was enjoined; I was not present.

By same. Where was she landing when you crossed on her prior to her being enjoined?

Ans. She was landing on Monmouth street when I crossed on her.

By same. Did the Commodore land at any other street prior to being enjoined, and was not that her usual landing place, Monmouth street?

Ans. That was her landing place until she laid up, or stopped for a while.

[400] By same. What interest have you in the Commodore?

Ans. I own one-third of her.

By same. When and from whom did you obtain, or purchase her?

Ans. I purchased her from Dadsworth and others on the 30th day of April, 1854, to the best of my recollection.

By same. Who are the "others" you speak of besides Dadsworth, from whom you made the purchase of the boat?

Ans. Wolff and others; I cannot recollect their names.

By same. Are you not the same company that run the Commodore when she was enjoined prior thereto?

Ans. As far as I know they are the original owners of the boat.

By same. Since you bought the boat and commenced running as a ferry-boat, have you, or have you not, taken passengers at the landing at Monmouth street on Kentucky shore, at Newport, and landed them on the Cincinnati shore?

(This question objected to by def'ts' att'y.)

Ans. There has no person crossed on her with my consent, but there has some forced themselves on board and crossed, although repeatedly told by me and the hands on board, that we could not [401] take them across; and also gave notice to men working on the wharf to keep any person from coming down, as we were not allowed by law to take them across.

By same. Have you not, or some of your hands, received ferriage for crossing persons from this side to the other since you began to run?

Ans. There has been some that have paid, and I sent some of the money down, and Air's son took it.

By same. By whom did you send the money?

Ans. By one of the hands on board of my boat; I do not recollect which.

By same. Have you not frequently sent money to Air's lately for the ferriage received by you for crossing passengers in your boat from Newport to Cincinnati, and Air refused to take the same?

Ans. Never but once.

By same. How many persons have you crossed in your boat from the Newport to the Cincinnati side, since you commenced running, and, as near as you can, estimate the number?

Ans. I can't answer that for I cannot tell; a few will force themselves on when I do not know it, and when I get out in the river and discover ladies on board, I have to take them over.

[402] By same. How much have you received from persons for ferriage from Newport to Cincinnati since you began to run.

Ans. A very small sum; I do not know how much; I do not think it will amount to a dollar; some have been forced on us.

By same. How many have you taken over free of charge? state as near as you can the number.

Ans. I cannot state as to number; I cannot tell; some few now and then will force themselves on, stating that they will do just as Major Taylor does, just as they please.

By same. What is the distance from Air's landing, at York street, to Monmouth street, where you are landing the Commodore at this time?

Ans. One square. I do not know the distance, but about 400 feet or a little more, but something near that.

By same. What number of hands are on said boat of your's, and

are they the same that were in the employ of Conway and others, when they run the Commodore?

Ans. There are six or seven of us, and I think some of them was on the Commodore, when run by Conway and others, but am not positive.

By same. Are you not receiving passengers in your boat every [403] day, and ferrying over from the *the* Cincinnati shore, and landing them at the foot of Monmouth street, at Newport, Kentucky?

Ans. Yes, sir.

By same. State when the market-house, you refer to as standing on the esplanade, was built, and whether there has been any on that place since 1823 or 1824?

Ans. I cannot recollect positive when it was built, or when removed, but I recollect of it being there.

By same. Who improved the landing at York street in 1851, and what was the character of improvement, and cost?

Ans. I was not in the Council, but it was my impression that the Council granted Major Taylor the privilege of repairing. The stone was taken up, and there was some filling done, but I do not know to what amount; I think it was under the superintendence of the City Engineer.

By same. Was there not a vote taken by the people, under a resolution of the City Council, whether or not they should aid in making said improvement, and how was it decided?

Ans. There was a vote taken, but how it was decided I cannot state.

[404] By same. Did you vote at said election, or whether the town should assist in the work?

Ans. I cannot state; I have no recollection whether I did or not, but think that it is likely that I did.

By same. Before the landing was improved by Taylor, in 1851, was it not steeper than it now is? and was there not some complaints that it should be made less so, to make it easier for teams to come up the bank?

Ans. I do not know that Taylor improved the wharf, but the wharf is much easier to pull on now, than it was before the last improvement was made.

By same. Where was the ferry kept, and by whom run from Newport to Cincinnati, when you came here in 1817?

Ans. My impression is, that it landed at York street, and run by Adam, a black man, belonging to General Taylor.

By same. What amount of dry-goods and groceries are sold in Newport, annually, or say within the last three or four years back?

Ans. There is considerable sold, but I cannot say how much.

By same. How many stores are in Alexandria, Kentucky?

Ans. There is two dry-good stores.

(The defendant's attorney except to all of the foregoing questions put by plaintiff, Taylor, to witness, relative to the witness running [405] the steamer Commodore, and passengers passing the river *witness*, on the ground of irrelevancy.)

By Taylor's attorney. Please state all the present owners of the Commodore?

Ans. G. R. Fearons, John Boyd, and ——— Wolff, of Cincinnati, a brother of Daniel Wolff, of Newport.

By same. Are they all the persons directly or indirectly interested in said boat, or the profits of running the same?

Ans. They are all that I know of.

By same. When was your purchase of said Commodore made?

Ans. About the 30th of April, 1854.

By same. Have you entered into a new lease for a landing at Monmouth street? if so, state when, and with whom.

Ans. I understand that Fearons got a transfer of the lease from the town, that they had made to the *for Com.* Wolff and others, but do not know at what time.

By same. Were you a member of the City Council of Newport when the City of Newport applied to the County Court of Campbell, for a grant of a ferry, or during the pendency of that controversy?

Ans. Yes, I was.

And further saith not.

J. F. BOYD.

[Deposition of R. B. McCracken.]

[406] The deposition of Robert B. McCracken, taken on 30th of May, 1854, who deposeth, &c.

By defendant's attorney. State how long you have known the Town, now City, of Newport, and particularly that part in front of the lots, and between them and Ohio river.

Ans. Since 1830. I lived here in 1830 and 1831, with J. I. Hayman.

By same. What use or uses has the strip of ground between the lots and the Ohio river been put to from that to the present time?

Ans. It has been used for steam and flat-boats landing. Rafts and all kinds of watercraft have used it for hauling out lumber, and all articles for the use of the city, and also for landing of ferry-boats from the other side.

By same. Who has controlled and claimed the ownership over that strip of ground since 1830 and 1831, and has it been continuous?

Ans. The then Town, and now City, of Newport; I never heard any one else claimed it until here lately.

By same. What improvements have been made down to the river in the way of wharves?

Ans. There was but one street that extended to the river in 1830, that was passable for wagons. York street, except at mouth [407] of Licking, there was a road, or passway, there to the Licking ferry; since then, East Row, Monmouth, and Columbia streets have been paved, and York street graded down, and McAdamized. The city made an improvement by a man by the name of Scott, but it is now washed away, for which Scott got a judgment against the city. There was an improvement made at the foot of York street, in the way of grading, for which there is a suit now pending, in favor of Temple, against the city. The improvement was made under the direction of the internal improvement Committee and Engineer of Newport. The improvement made on Monmouth, last fall, was made by Wolff and others; the present improvement is under the direction of the Internal Imp. Com., or wharf Com., by order of the City Council. The piling between Monmouth and York, and below Columbia, to the Barracks, was made by the city, and private subscription by persons living on the bank of the river, and also the city expended several hundred dollars at the foot of Saratoga street, which has all washed away, or nearly so. There [408] was some little money spent at the foot of Cabbot street, to protect the bank, or the piling across that street, by the city.

By same. State what portion of the strip of ground, between the lots and the Ohio river, is designated, and considered the "Esplanade:" describe its extent up and down the river; what was its width when you first knew it, and what is the width of it now?

Ans. My understanding is from Monmouth street, to Licking river; in length, it was from 75 to 100 yards from Perry's corner to the top of the bank, when I came here, in my opinion, but I am not certain, and a considerable distance from there to the water, but I think about 75 yards in very low water. I think it is about 175 to 180 yards now, from Perry's, to low water mark; at the lower end of the city it was not so wide; it has washed more at the upper part of the city than at the lower part.

By same. State what you know about the collection of wharfage on the esplanade, or any other ground, between the lots and the Ohio river.

Ans. I never knew of any wharfage collected, until within a year past.

[409] By same. Who has collected wharfage within a year past?

Ans. The City of Newport.

By same. State whether there is a large or small amount of commerce and trade between Ohio and Kentucky, crossing the river at Newport.

Ans. There is a very large amount of commerce and trade crosses the river here, such as market-wagons, groceries and lumber, brick, lime, &c., horses, cattle, mules, hogs, and sheep, &c.; and I have seen as high as thirteen vehicles at a time waiting to cross. All

the goods, groceries, &c., that is used in this end of the county, and Alexandria, cross here. There is also a good deal of crossing here by Mr. Wolff's wagon from his rolling-mill, and the wagons from the two saw-mills in this place, which, I believe, cross from three to five times a day.

By same. What were the accommodations for crossing the Ohio river, between Newport and Cincinnati, before the Commodore commenced running?

Ans. The accommodation then was very inferior then to what they are now.

By same. Have the plaintiffs made any improvements in their boats since that time? If so, state how they have been improved.

Ans. They have, by putting a cabin on the stern of their boats, [410] which they had not before. Their former cabin was about seven feet by ten, perhaps, with a couple or three seats nailed up for passengers. I have seen ladies compelled to stand up during the trip across the river, for the want of room to sit down.

By same. What part of the boat was the old cabin upon, and where was the entrance before the new cabins were built?

Ans. On the larboard side of the boat, on what we call the guards of the boat; and the entrance was in front of the boilers, or in the forepart of the boat. I have seen ladies have to walk among drays and wagons to get into the cabin, and on and off of the boat, and frequently have to wait for wagons to go off, before they could get off, and have to stand in the sun and rain.

By same. State whether the gangway, for going on to the boats, and off of the same, was the same for men, women, and children, horses, hogs, cattle, drays, wagons, &c., and whether there was any inconvenience suffered by that cause, before the completion of the stern cabins.

Ans. There was but one place of entrance, that was over a coal-[411] pile, or to pass around among drays, wagons, &c., as the boat was nearly always crowded, during some parts of the day, previous to the Commodore running. There was one boat run constantly, the other about half the time; would come on about nine o'clock in the morning, and go off about four or five, when she did run, and then lay up sometimes for three days at a time.

By same. Has there been any improvement in the time and manner of running the two boats of the plaintiffs' since the steamer Commodore commenced running? State, also, whether the stern cabins were put on the plaintiffs' boats before or after the commencement of this suit.

Ans. There has been a very great improvement; the accommodations are better, by at least one-half, than they were before the Commodore commenced running. The cabins was put on after the commencement of this suit.

By same. How is the construction, size, model, and finish of the

steamer Commodore suited and adapted to the transportation, trade, and commerce crossing the Ohio river at Newport and Cincinnati?

Ans. She is the best adapted to the business of any boat that [412] lands at Cincinnati, Covington, or Newport, for the purpose of carrying passengers or freight, and has come out under the requirements of the law of 1850; has a life-boat, &c.

Cross-examined by plaintiff, Taylor.

Are you not now a member of the City Council of Newport, which Council is a party defendant to this suit?

Ans. I am a member of the City Council, from the First Ward, of the City of Newport.

By same. Were you also a member when the suit was first instituted?

Ans. I was.

By same. Were you not a member of the City Council of Newport, when there was a suit in regard to the Newport ferry, between the said City Council and J. Taylor's heirs, and decided by the Court of Appeals of Kentucky, in 1850?

Ans. I was in the Council in 1849 and '50.

By same. Have you, or have you not, always been opposed to the claims of Taylor's heirs to the ferry at Newport, and in favor of the Commodore?

Ans. I never thought they had any claim to the ferry. I got my impression about it from William Southgate, one of the best law-[413]yers in this part of the country, in my opinion.

By same. Who do you think has the best claim to said ferry?

Ans. The City of Newport.

By same. Are you, or are you not, one of the subscribers for the purpose of raising funds to keep the Commodore running?

Ans. I lent Boyd and Fearons one hundred and fifty dollars, which they agreed to pay me back if the boat makes expenses, or enough to pay me back.

By same. Did you, or did you not, sign a call for an indignation meeting at the Court-house, in Newport, Kentucky, on 28th January, 1854, after the decision of Judge Duvall, at Frankfort, in reference to the injunction in the suit of Taylor & Air against Wolff and others?

Ans. I did not. I was sick at the time.

By same. Did you attend the meeting on the 30th of January, 1854, when certain resolutions were passed in reference to said suit?

Ans. I was at a meeting here, where some resolutions were passed, but I do not recollect the date.

By same. Is not the Commodore running now, as a ferry-boat, between Newport and Cincinnati?

Ans. She is carrying passengers from Ohio to Kentucky, and

[414] she carried me from here to Covington, for which I paid her.

By same. Has she not carried passengers from Newport to Cincinnati, also?

Ans. None that I know of. I have known men and ladies to rush on board of her, and refuse to go off, and have known Mr. Boyd to station men at the top of the wharf to keep persons from coming down to her.

By same. Did you not assist in making the wharf at Monmouth street, for the benefit of the Commodore? and is not a part of that wharf below the line of Monmouth street, if said street was extended to the river?

Ans. I did not assist, individually, myself, but I had hands there making the improvement for the city, as I am the chairman of the committee on the wharf. There is a part of it below Monmouth street, on the esplanade, belonging to the city.

By same. Was there not a vote taken by the people of Newport, in 1851, whether they would or not improve the wharf at York street, and how was the matter decided by said vote?

Ans. There was a vote taken whether they would expend any money on it, and decided in the negative, by some three hundred of [415] a majority, for the reason that the city was not able, and Taylor reaped all the benefit.

By same. Who made the contract with Temple for improving the same, and who paid Temple?

Ans. I do not know.

By same. Was not said wharf graded, macadamized, and graveled, in the year 1851?

Ans. I believe it was.

By same. Did you ever measure the cabins in Air's boats, before the new cabins were built aft part of the boat?

Ans. Only with my eye.

By same. How long has it been since the cabins in the Covington boats were changed, from being in front, to the after-part of the boats?

Ans. About four years, I think.

(Attorney for defendant excepts to all of the foregoing questions by plaintiff, Taylor, which relate to the running of the Commodore, and transportation of passengers, &c., by the present owners, since the commencement of this suit, as irrelevant, and to all leading questions as to new matters.)

By df'ts' att'y. Do you know of any indignation meeting being called or held in Newport in reference to the injunction granted by [416] Judge Duvall? Was not the meeting which was held, convened for the purpose of peaceably consulting as to the best mode of prosecuting the defence in the case, and also expressing their appro-

bation of the running of the steamer Commodore, before the granting of the injunction.

Ans. I do not know of any indignation meeting being held in reference to his decision; the object of the meeting was to consult as to the best mode of prosecuting the defence in the case, and also to express their approbation of the running of the Commodore before the granting of the injunctions; after the injunction was granted Air run only one boat on Sunday, which was not enough for the accommodation of the people. And further saith not.

ROB'T B. McCRACKIN.

[Deposition of I. F. Hayman.]

The deposition of I. F. Hayman, taken on May 31st, 1854, who deposeth, &c.

By att'y for def'ts. State how long you have known the City of Newport?

Ans. My father moved to Newport in 1805, and I have been conversant with the place ever since.

By same. State the use that has been made of the strip of ground [417] between the lots and the Ohio river, in Newport, and whether it has been used and claimed as public ground or as private ground, and who has exercised jurisdiction over it.

Ans. Gen'l Taylor's ferry has occupied part of it, and as far as I know or believe, the town has occupied it; the town has claimed it and used it as public ground; I do not know of any person exercising jurisdiction over it; it has been used in various ways by water crafts landing at it, and by rafts landing and being drawn out at all the different landings.

By same. State whether the said strip of ground has been made use of by the citizens of Newport, and the public, for all the purposes usual for a public wharf on the Ohio river.

Ans. So far as I know, it has.

By same. Have you known of any ferries being run from the Ohio side of the river, and landing on said strip of ground in years past? If so, state when and who the persons were.

Ans. I have known three ferries; one was run by a man by the name of Smith; I think from the year 1815 until 1818, or about that time, and one by a man by the name of Farrar; for many years after Smith quit, also James Walls, and also George W. Doxon; I [418] do not recollect what time; Walls run his ferry-boat, but I think it shortly after Farren's quit; Doxon run the ferry in 1835.

By same. State whether those ferries above named were independent of the ferry run by Taylor and his lessees?

Ans. They were; I knew of no connection at that time; but there was a connection afterwards, but I do not know when it took place.

By same. State where the boats of those ferrymen landed on the Newport side of the river.

Ans. They landed at different landings; Doxon, Farren, and Smith landed at York and Columbia generally.

By same. State whether any of those ferrymen carried passengers from the Newport side of the river, in opposition to the ferry run by Taylor or his lessees.

Ans. I know that George W. Doxon carried passengers from this side in opposition to the lessee of General Taylor in 1834, I think.

By same. State how long George W. Doxon continued to run the opposition ferry?

Ans. From my recollection, for several months.

By same. What lessee of Taylor's did he run in opposition to?

[419] Ans. Simon H. Rigg.

By same. State whether you have had a knowledge of the mercantile business of Newport, and the county back of Newport, and the commerce and trade of Newport, and the county back, and where the trade of the city and county aforesaid concentrates, and whether the trade and commerce is great or small?

Ans. I have had a knowledge of the mercantile business of Newport and the county back of Newport, and the commerce and trade of Newport and county back, for I have been engaged in the mercantile business myself in Newport, more or less, for the last fifteen years previous to the year 1854: the mercantile retail trade of the county and city has mostly concentrated in Newport and Alexandria; the trade and commerce of the county is very good, considering the extent of territory.

By same. State whither the commerce and trade of the City of Newport and country back, other than the retail mercantile business, concentrates?

Ans. The goods and groceries sold in the county are mostly purchased in Cincinnati; there is a large amount of produce raised in Campbell county and taken to Cincinnati and sold; also a great number of cattle and hogs, and other stock crossed in any given [420] year from Newport to Cincinnati, for sale.

By same. What is the point of crossing the Ohio river with the stock, &c., above mentioned?

Ans. Newport mostly.

By same. State what you know about the quarrying rock in front of the Town of Newport?

Ans. There has been rock quarried in the front of Newport at various times and various places, in the bed of the Ohio river; I have quarried myself at several times and in several places; I have known John B. Lindsey to quarry a great many stone, (or have it done,) also Hubbard Berry, and various other persons.

Adjourned until to-morrow morning, 8 o'clock, May 31, 1854.

The deposition of Isaiah F. Hayman, continued May 31, '54, agreeable to adjournment.

By same. What part of the strip of ground between the lots and the Ohio river is designated and known as the "esplanade?" Describe it.

Ans. The esplanade, as I have always understood, is the strip of ground running from the foot of Monmouth street, running down the river to the mouth of Licking, and from the building fronting [421] the river down to low water mark; I have frequently heard Gen'l Taylor speak of that as the esplanade, and on the recorded plat of the town, according to my recollection, is designated as the esplanade.

By same. Has that part of that strip of ground been called by any other name than the "esplanade?"

Ans. Yes, I have frequently heard it called, (and I believe miscalled,) Front street, and Water street; and that it has always been occupied by the public as a street or thoroughfare and otherwise, from the front of the lots fronting on the river to the river.

By same. State what lot on the plat is "Perry's corner?"

Ans. The lot on the plat known as "Perry's corner," in No. 57, bounded north by the esplanade, and west by York street.

By same. State what use was formerly made of the ground designated as "common" above the mouth of Monmouth street?

Ans. It was used for various purposes; it was occupied by Thomas Parmer as a ship yard, for a long time, and by others for building boats and for other purposes by the public.

By same. What is the character of the business that most of the citizens of Newport are engaged in? Is it mercantile, mechanical, or [422] other business?

Ans. The most of them are mechanics.

By same. Is the proportion of manufactories to the number of inhabitants great or small, taking into consideration the location of Newport, and its natural advantages for manufacturing purposes, and the further fact that most of the citizens are mechanics?

Ans. I would say it was very small, knowing the fact that there are hundreds of mechanics go to Cincinnati every day for employment.

By same. State whether the accommodations for crossing the Ohio river have had any bearing in keeping the manufacturing establishments from locating in Newport.

Ans. Yes. I have heard men make that as an objection; I have known people to come here, and leave on that account.

By same. State where the race-track was at Newport, at the time George W. Doxon was here.

Ans. The Belleview addition is on part of the first race-track, [423] on the south-east corner of the town, adjoining, at that time, the public square addition, and the west end of the other track came up to the south-east corner of the Belleview addition, and I

think a few of the buildings, as they stand, are on, or inside of the track.

By same. What were the accommodations for crossing the Ohio river at Newport, before the steamer Commodore commenced running in the trade?

Ans. At times the accommodations were very good, and at other times, very bad, and not such as ought to have been extended towards the people. What I mean, is, at times the boats were run very irregularly, and at other times, very regularly, and I have not, for many years, considered the accommodations on board of the ferry-boats, such as they should have been, in regard to comfort and convenience, as to cabins and otherwise. I have known it very frequently to be the case, that a number of passengers, for want of rooms to shelter them, been compelled to stand out in the inclemency of the weather; and I have always considered the rooms (such as they were) uncomfortable, and not sufficient large, [424] and being very dirty generally; and I have frequently seen it the case, that men, women, and children, have been compelled to rub through the wagons, in order to get to the cabin, and frequently they could not get to the cabin at all, and been compelled to stand out in the weather in consequence.

By same. State whether there has been any improvement made on the two boats of the plaintiffs', since the injunction was granted in this case, and what they are.

Ans. There has been very great improvements, consisting of good, roomy, and well-finished cabins on the sterns of the boats, and being well painted, and kept clean, and nice, with good chairs to sit on; ornamental railing on the upper deck.

By same. State what improvements, if any, have been made in either of the platforms at the landing of the plaintiffs' boats, on either side of the river.

Ans. There has been a new shanty on the other side of the river, on the platform, but, as occupied, affords but little accommodation, the larger part of it being occupied by some person who appears [425] to be selling liquor, candies, and other things. The platform on the Newport side has only been improved by extending the roof out about six feet, on the end down the river, the roof being of boards. The balance of the shanty, or the old part, being in a dilapidated condition, and kept in a dirty and filthy condition.

By same. State whether the steamer Commodore is suited to the trade and commerce of the cities and country, crossing the Ohio river at Newport, in her size, manner of construction, &c.

Ans. I would say she was very well calculated, from my knowledge of her.

By same. State the character of the platforms used by the steamer Commodore, their conveniences, cleanliness, &c.

Ans. The platforms on both sides of the river are well adapted,

with good and comfortable shanties, and kept in good order, with seats to sit on.

Cross-examined by plaintiff, Taylor.

Since you have known the Newport ferry, has not Taylor, and his lessees, used various parts of the river shore in front of the town, for landing their skiffs, and other ferry-boats, as it best suited their convenience?

[426] Ans. Yes; I have known Taylor, and his lessees, to land their ferry-crafts, and boats, at different points from the mouth of Licking, up to East Row. For several years after the year 1814, the ferry landed principally at the foot of Columbia street, after which the principal landing of the ferry, was the foot of York street; occasionally, but very rarely at the foot of Monmouth street. There was no one *again* said anything against *the* Taylor, and his lessees, landing their ferry at any place on the esplanade, that he saw proper, and when the water has been so low that they could not land at any other place, the boats have been landed on a bar opposite East Row, some one hundred yards out from the front of East Row.

By same. Has not Taylor, and his lessees, claimed and exercised the right to land their boats on the whole river shore in front of the Town, now City, of Newport?

Ans. I know they have always exercised the privilege, and I believe they claim the right, but never have had a conversation with them on the subject. I never heard their right disputed—[427] that is, the right to land their ferry-boats.

By same. Had not J. Taylor, many years ago, a ferry-boat built on the space of ground above Monmouth street, and between that and East Row, and between the lots and the river?

Ans. I do not recollect.

By same. You say that Doxon, in 1834, run an opposition ferry to Rugg, who was lessee of Taylor, and took passengers from this side. Was not that a temporary matter, and a trespass upon the rights of Taylor's lessee, on this side of the river, and the same stopped?

Ans. According to my recollection, Doxon run a ferry from the Ohio side, in 1834, and was in the habit of taking passengers from this side daily, for several months. I, at that time, and do yet, consider it a trespass on the right of Rugg, Taylor's lessee, according to the custom in which the ferry-privilege has generally been viewed. I believe there was an injunction granted at the time, but I never saw it yet, I have doubt of it.

By same. What were the rates of ferry from Newport to Cincinnati, fixed by Judge Boyd, in 1852, I mean the lowest rates?

Ans. One cent for a foot passenger, and for monthly ferriages, [428] 25 cents, for families, each way, both before and since the rates was reduced by Boyd.

By same. What were the rates of ferry charged by the Commodore, from Cincinnati to Newport, when she ran?

Ans. I do not know; I never crossed on the Commodore but once, and then I paid three cents.

By same. What is the cost of building a ferry-boat, such as run by Captain Air, at this time, and of running the same, including cost of hands, fuel, &c., and all other expenses attending same for one year?

Ans. The cost of such boats as Air *are* now running I should think would cost from seven to nine thousand dollars each.

By same. Who improved the wharf and landing at York street, in 1851?

Ans. As I understood, the repairs were made by James Taylor.

By same. Was there not a vote taken by the citizens of Newport, in 1851, whether they would, or would not, improve, or repair, the wharf at York street, and how was the same decided?

Ans. In 1851, agreeable to my recollection, there was a vote of the town taken, pro and con, whether the people wished the City [429] Council to make an appropriation for the repairs of the foot of York street, which resulted against it. The reason with me was this, that I was opposed to repairing the wharf for the accommodation of the ferry, believing that the wharf was sufficient for the people, but the wharf was considerable out of repair; and further, my opposition arose from the fact, that the town was too much in debt, to incur further expenses.

By same. Although thus indebted, did not the city go on to make other improvements the same year?

Ans. I do not recollect.

By same. How many years has it been since the cabins were changed on the boats at the Covington ferry, from the front to the after part of the boats?

Ans. I can't say, but I think I crossed in a cabin, on the stern, some three or four years since.

Resumed by defendants' attorney. Is not the amount of ferriage collected for crossing carriages, wagons, drays, &c, horses, mules, cattle, hogs, and the like, largely greater and more than the ferriage for crossing foot-passengers?

Ans. I believe it is largely greater.

And further this deponent saith not.

I. T. HAYMAN.

[430] [Deposition of C. Breith.]

The deposition of Charles Breith, taken on the 31st of May, 1854, who deposeth, &c.

By defendants' attorney. State whether you are clerk or bookkeeper for Daniel Wolff, and what you know of the transportation

of materials and manufactured articles, over the Ohio river, by Dan'l Wolff.

Ans. I am book-keeper for Dan'l Wolff, proprietor of the Newport Rolling Mill; the value of the manufactured articles, sent to Cincinnati, from Newport, Kentucky, by Mr. Wolff, from the 1st January, 1853, to 1st January, 1854, was $244,000 00; and the value of the raw material, brought from Cincinnati to Newport, was $82,500 00.

By same. State whether the above amount is a fair average of the yearly transportation to and from Wolff's mill.

Ans. I believe it is a fair average. And further saith not.

CHAS. BREITH.

[Deposition of L. H. Rugg.]

The deposition of L. H. Rugg, taken on 31st May, 1854, who deposeth, &c.

By attorney for defendants. State whether you ever *own* a ferry between Newport and Cincinnati; if so, when, and for how long?

Ans. I have *own* a ferry between Newport and Cincinnati. I think I took the ferry in 1832 or '3; I cannot say how long I run [431] the ferry before George W. Doxon and myself went into partnership in the ferry. Shortly after I took the ferry, George W. Doxon bought a horse-boat, and started an opposition ferry to me; he landed below me on this side; his landing on the other side was at the foot of Ludlow. My landing on this side was at the foot of York street, and on the Cincinnati side at the foot of Lawrence street.

By same. How long did Doxon run his opposition ferry, and why did you form a partnership with him?

Ans. I cannot tell how long he run the opposition ferry before we went into partnership, but I do not think longer than six or eight months. I went into partnership with Doxon to avoid a law-suit, thinking it was the best way to settle the difficulty; we run the two boats together, not longer than five or six months, before one of them sunk, and then we run the other horse-boat for some time, until we bought the steam ferry-boat that run at Covington.

By same. How long did you continue in partnership with Doxon, and did you run the ferry alone after the partnership ended?

Ans. Doxon and myself continued in partnership, until May, 1834. I did. I took a lease from General Taylor, which I here [432] make a part of this deposition, marked B B.

By same. Did any other person, except Geo. W. Doxon, ever run an opposition ferry against you?

Ans. James Walls did.

By same. How long did Walls run the opposition ferry?

Ans. I cannot say, but I do not think more than two or three months, before he was enjoined. Walls owned a ferry-landing on the Cincinnati side, and started a ferry from that side, and would take passengers from this side for nothing.

By same. Since your knowledge of the Town of Newport, and before Air got the ferry, have you known any other ferries being run from the Ohio side to Newport? if so, state what ones, and for how long?

Ans. Farrans run a ferry from the Ohio side to Newport, and run the ferry for about twenty years, to the best of *his* knowledge. I do not know of any other, till Walls. There was a man by the name of Smith that run a ferry from that side, but I cannot say who he run under.

By same. Where did the ferrymen from the Ohio side land their boats and discharge their loading?

[433] Ans. They generally landed at York street; but when Walls commenced running, I think he landed above York street.

By same. State how long you have known the Town of Newport, and had a knowledge of the ferries above-mentioned.

Ans. Thirty-seven years since I first came to this place. I have been here ever since, except two years that I was in California; part of the time I lived in the country, close in the neighborhood of Newport.

By same. State whether the strip of ground, between the lots and the Ohio river, has been used for any other purpose than a ferry-landing, and if so, what?

Ans. The landing, except the ferry-landing, has been used in every way that the public wished to use it. The ferry-landing was at the foot of York street; but when the water was low, and we could not get in at the foot of York street, we had the privilege of landing at any other point we saw proper; and, in low water, we would land on a bar above Monmouth, as it was the only place we could find water sufficient. The strip of land was used for landing boats, rafts, &c., by the public generally.

By same. State what part of that strip of ground was designated [434] as the "esplanade:" describe its extent up and down the river, and whether it run from the front of the lots to the river in width.

Ans. From the foot of Monmouth street down to the mouth of Licking, was always considered the esplanade, and from Front street to the Ohio river. *The* called it Common; we always considered that there was a street run between the lots and the common; at that time I had never saw the plat.

By same. Was what you supposed to be the street put to any other use than the ground that you considered outside of the said street? If so, what other use?

Ans. It was then considered, as it is now, a street running up

from the garrison in front of these houses, and used as such; outside of that was considered a public common, and used as such.

By same. State what you know of a market-house on the esplanade.

Ans. I know that there was a market-house there, that we used as such; when I came here, it was there; I do not recollect how long it remained, but perhaps two or three years after I came [435] here, before it was taken down.

By same. State what you know of stone being quarried out of the river in front of the town of Newport.

Ans. When the water was very low there was always quantities of stone taken out of the bed of the river; every one that wanted them went and got them; Boyd, Lindsay, Wilson, Weston, got them there.

By same. Did you ever know of any person asking permission of General Taylor to quarry stone there, or of General Taylor, or any person else, claiming them as private property?

Ans. I did not; it was considered the bed of the river, and every one, that had the means, went and got them, that wanted them.

By same. Who have you always considered, and understood, to be the owner of the esplanade, or common, for every other purpose except the landing of the ferry-boats?

Ans. It was always considered that the ferry and ferry privileges belonged to General Taylor; outside of that it was considered public property, and used as such, and owned by the town; every person that wanted to land boats used it. While I had the ferry, I con- [436] sidered that I had the privilege, and if there was a boat in my way I had the right to move them, for I considered I had the exclusive right, as that is the way I understood my lease.

By same. Did you ever remove any persons, boat, or craft, under the authority claimed by you above, or exercise that right at any time?

Ans. I do not recollect of ever having an occasion for moving any, for if they were in the way they would always move.

By same. Was any one ever in the way, when you wanted to land, that you recollect of?

Ans. I cannot recollect any particular one; but frequently boats and rafts have been in my way, but always moved and made room for me to come up with my ferry, whenever ordered.

By same. At what point or points have boats and rafts been in your way, and removed from, as stated in the last answer?

Ans. The foot of York street.

By same. What point or place was the regular ferry landing at the time you run the ferry, and has it so remained since that time?

[437] Ans. the foot of York street, when there was water sufficient.

By same. Has the landing had to be made elsewhere than York street, on account of low water, often or seldom?

Ans. Seldom.

By same. How often in the course of ten or fifteen years back?

Ans. I cannot say; some seasons were so that we did not have to leave the York street at all.

By same. State whether there has been any improvement put upon the two boats of the plaintiffs' since the steamer Commodore was stopped by the injunction in this suit, and what improvement has been so made?

Ans. There has been great improvement put on the two boats of Capt. Air, since the Commodore started; there has been two excellent cabins put on them since.

By same. State what part of the boats the cabins were put on, and whether the improvements have been made since the enjoining of the Commodore.

Ans. The cabins are on the stern of the boats, and have been put there since the injunction.

By same. What were the accommodations afforded by the boats [438] of the plaintiffs compared with the demands of the public, before the Commodore commenced running?

Ans. They were not good, far inferior to the accommodations of the Commodore and especially to foot passengers, and especially to ladies.

By same. State which is the greatest, the amount of ferriage received from foot passengers, or the amount received from carriages, wagons, drays, horses, mules, cattle, &c., hogs, &c., and state the proportion.

Ans. I should judge there was not one-half received from foot passengers that there is from other sources.

Question by pl'ff, Taylor. What are the facilities in the way of ferry accommodations furnished at this time by Robert Air, from Newport to Cincinnati, and how does it compare with the ferry accommodation from Covington to Cincinnati?

Ans. The facilities afforded at this time by Robert Air is good, for Air has the best ferry now that I was ever acquainted with, and they are far superior to the accommodations at Covington.

By same. What kind of boats were run from Newport to Cincin- [439] nati when you first took charge of the ferry, and at what points were the boats landed, and did you not use all or any part of the river front to land and take in passengers?

Ans. When I took the ferry I had a horse boat, a flat, and skiffs on this side; I took off and put off passengers at any point most convenient for in very high water; we made use of any point we choose.

By same. How many steam ferry-boats were run by Air prior to the running of the Commodore?

Ans. Generally two.

By same. Has not this improvement of putting on stern cabins on steam ferry-boats been a late improvement in the western country?

Ans. In Covington they had them for several years, but I cannot say precisely how long.

By same. What kind of cabins had you when you run the ferry, on your boat?

Ans. Something similar to the one Capt. Air had previous to his putting on the stern cabins.

By same. Has not the ferry from Newport to Cincinnati, since your knowledge of it, being run by Taylor and his lessees claiming under him?

Ans. It has.

And further saith not.

L. H. RUGG.

[James Taylor. Lease to L. H. Rugg.]

The lease from James Taylor to L. H. Rugg, referred to in the foregoing deposition (exhibit B B) is as follows, viz:

This agreement and contract, made this first day of May, in the year of our Lord eighteen hundred and thirty-four, between James Taylor, of the County of Campbell and State of Kentucky, of the one part, and Lyman H. Rugg, of the Town of Newport and State aforesaid, of the other part, witnesseth, The said Taylor hereby leases to the said Rugg his ferry across the Ohio river from his landing in front of Newport to the Cincinnati landing, for the term, of seven years, from the date aforesaid, and on the following terms, to wit: The said Rugg agrees and binds himself to pay the said Taylor the sum of one thousand dollars rent for said ferry for first year, and the sum of twelve hundred dollars a year, for each of the following six years, which is to be paid in lawful money of the United States; the rent of said ferry is to be paid monthly in [441] advance; and if the said Rugg should at any time be more than twenty days in arrear in paying up each month's rent of said ferry, the said Taylor reserves to himself the privilege of re-entering and taking possession of the same; but the said Rugg is not to be at liberty to give up the ferry; said Taylor shall be at liberty to proceed to recover each month's rent, or any arrears of rent, whenever the said Rugg shall omit to pay the same for a longer time than twenty days during this lease. The said Rugg is to keep a good steam ferry-boat for the purpose of conveying passengers, wagons, carriages of any kind during the lease, across the Ohio river, from the landing in front of Newport, to the landing at Cincinnati, aforesaid, and is also to keep all other necessary boats and crafts, such as flats and skiffs, for the purpose of conveying passengers, wagons, carts, carriages, and produce across said ferry. The said Rugg is

to keep said Taylor free from all damages, should he or his hands neglect to keep said ferry in a correct and attentive manner, and to keep said Taylor free from all fines and damage on account of any injury that may be done either to boats, persons, or property, by [442] himself or his hands employed during the continuance of this contract and lease, and also to keep said Taylor free from all fines imposed on him for negligence in attending said ferry during the continuance of this lease, and should the County Court of this county require boats to be kept at any other point on the river above or below the present landing, the said Rugg is to provide such boats as may be required for the purpose of transporting passengers, &c., across the said ferry to Cincinnati. The said Rugg binds himself to keep the landings in good order, that passengers and wagons and carriages may have no trouble in ascending and descending the bank, and to keep said Taylor free from all and any damage on account of any presentments hereafter to be made, should there be any, for not keeping the said bank and landing in good order and repair, and free from all fines that may be imposed upon him, the said Taylor, on account of the bad repair of said road down to the landing. The said Rugg is to cross backwards and forwards from Newport to Cincinnati, and from Cincinnati to Newport, all of said Taylor's family, sons, and sons-in-laws' families, free of all charge, [443] and also all persons engaged in said Taylor's employ, also all his wagons and carts, carriages, and horses, and produce, and anything he may wish to have taken over and brought back, and also to bring over and to take back all music and French teachers employed in teaching his sons and sons-in-laws' children, free of charge, and such of his servants as he may wish to send across the said ferry, free of charge. The said Taylor agrees that in case the said County Court of Campbell, or the Legislature of Ky., should establish another ferry, and vest the right in any one else beside the said Taylor across the Ohio river to the City of Cincinnati, then he will deduct so much from the rents as its value is decreased by the establishment of any such ferry. And in case the said parties cannot agree as to the amount to be deducted, they are each to choose an individual of honorable standing to arbitrate the matter, with power for these two so chosen, in case they differ, to choose an umpire, whose award shall be conclusive on the subject, and binding on the parties. And the said Taylor agrees that the said Rugg shall have the full and free use of said ferry, and hereby gives him possession of the same; and said Taylor binds himself, not to exercise the right [444] of said ferry himself, nor to grant the privilege to any one else, so long as said Rugg shall comply with the provisions and terms of this lease. For the true performance of the foregoing, the said parties bind themselves, their heirs, executors, and administrators,

each to the other. As witness our hands and seals, the day and year first above written.

JAMES TAYLOR, [SEAL.]
by his att'y-in-fact,
JAMES TAYLOR, Jr.
LYMAN H. RUGG, [SEAL.]

Witness,
SUSAN L. TAYLOR.

The said Rugg is not to take the steam ferry-boat away from the ferry, for the purpose of ferrying at any other ferry, or to tow rafts and boats up and down the river, but said boat, or another steamboat, is to be kept constantly at said ferry during the continuance of the foregoing lease.

As witness our hands and seals, this 1st day of May, 1834.

JAMES TAYLOR, [SEAL.]
by his Attorney-in-fact,
JAS. TAYLOR, JR.,
LYMAN H. RUGG, [SEAL.]

Witness,
SUSAN L. TAYLOR.

[Deposition of F. A. Miller.]

The deposition of F. A. Miller, taken on the 1st of June, 1854, who deposeth, &c.

By defendants' attorney. State when you first became acquainted [445] with Newport, and what you know of the use of the strip of ground between the lots and the Ohio river.

Ans. I became acquainted with Newport, about the year 1832; the strip of ground has been used as a public convenience, or landing, and I think, in the year 1838, or 1840, the town collected wharfage for boats landing at it, and the collection of wharfage continued about two years, and then abolished in consequence of it keeping boats from landing here. I run for trustee in opposition to the wharfage, and I was elected in 1843, I think.

By same. State what you know of any improvement made on that strip of ground, what improvements, and who made them.

Ans. York street was graded and paved by the town, but I do not recollect the precise date. The rest was the foot of Columbia street, done of Joseph Kean, by the direction of the trustees, in 1838, or 1839, and cost about $3000, or a little more. The next was East Row, under the supervision of the town, to the best of my recollection. Since then, it has been under the jurisdiction of the trustees, and they have repaired that street since it was first paved. Monmouth street was graded and paved by J. M. McArthur, by direction of the trustees, and under the control of the trustees,

[446] since that time, until it was leased to the company of the packet Commodore, which was in September, or October, 1853. I do not know which the most of the improvement was made between Cabbot and Columbia. Scott undertook to pave it, and paid part by the town, and part by subscription, of the property-holders fronting on the work, under the supervision of the city, and it cost the city a little upwards of $3500. The next was driving spiles from the Barracks, up to Columbia street, and from York to Monmouth, and paid for by the City Council, as I believe, and subscription. I do not recollect the cost, and the whole strip *have* been under the city authorities since.

By same. State whether you know of any ferries to be run from the Cincinnati side, to the Newport side, prior to the running of the ferry here by Captain Air, and state what ferries.

Ans. Mr. Farren run a ferry from the Ohio to this side. I am not certain of the time, but I think in 1833. Walls run a ferry, I think.

By same. Where did those Ohio ferries land on the Newport side?

Ans. At the foot of York street.

By same. What point has been the regular ferry-landing at Newport, since your knowledge of it?

[447] Ans. The foot of York street.

By same. State what were the ferry-accommodations at Newport, before the Commodore commenced running. State as to the construction of the boat, or boats, and accommodation extended.

Ans. The accommodation for foot passengers was not so good as they are now. The boats have been considerably improved, both in cabins, and in running.

By same. State how the Commodore is suited in her size and construction, *of* the commerce and trade passing the Ohio river, at Newport and Cincinnati.

Ans. She is very well calculated to carry freight and passengers between the two cities where she is running.

By same. What is the capacity of the Commodore, compared with either of the ferry-boats of the plaintiffs'?

Ans. Her *carring* capacities are much greater.

By same. When was the after-cabins built on the two boats of plaintiffs? was it before or since the enjoining of the Commodore in this suit?

Ans. They were built since the Commodore was enjoined.

By same. State what you know of an improvement, in the way of extending, and repairing the wharf at the foot of York street, in 1851, or thereabouts.

Ans. About that time there was a proposition made by Mr. [448] Root, from Mr. Taylor, Jr., for an appropriation of a $1000 for the repairs of the foot of York street, and that was the cause of

an election being called, to know whether the citizens were willing to appropriate a $1000 for the purpose of improving the foot of York street, which resulted in a refusal, 2 to 300.

By same. Have you any orders copied from the records of the Town of Newport, as to said improvement on the York street wharf? if so, file them.

Ans. I have, and here file them, marked "C C."

By same. State whether the trade and commerce between the States of Ohio and Kentucky, and from other States, across the Ohio river, at the points of Cincinnati and Newport, to much extent.

Ans. Yes, they do.

By same. Was the steamer Commodore engaged in that trade at the time she was enjoined in this suit?

Ans. She was a packet, carrying freight and passengers.

Cross-examined by plaintiff, Taylor. Does not the boats of Robert Air carry passengers, wagons, and other articles, just in the same manner as the Commodore?

Ans. They do.

By same. What was the sum agreed to be paid by the owners of [449] the Commodore, for a lease of the landing at foot of Monmouth street, in 1853.

Ans. Mr. Conway, for the Company, applied to the City Council for a lease, and obtained it for five years, at five dollars for the five years.

By same. What is the character of the accommodation at this time, furnished by Robert Air for crossing the Ohio river, in way of ferry-boats?

Ans. It is very good.

By same. What is the difference between the cabins for foot passengers on the boats of Air, and that of the Commodore?

Ans. All the difference that I know of, is, that the Commodore's are a little larger.

By same. How do the boats of Air, compare with those that are run at Kennedy & Wiggens' ferry at Covington?

Ans. The cabins are better furnished on Air's boats.

By same. Are not the improvements on these ferry-boats, as the cabins in the rear, a late improvement?

Ans. They are.

By same. Are you not one of the subscribers to the running of the Commodore, since the injunction, and how much have you subscribed for the benefit of those who run her?

(This question is objected to by defendant's attorney.)

Ans. Not one cent.

[450] By same. Were you not one of the signers to call a meeting of the citizens of Newport, to take place on the 30th of January last, in regard to the suit decided at Frankfort, in reference to the running of the Commodore, which meeting was held for the call,

on the 28th of January, and at which sundry resolutions were passed, Mayor Fearons presiding?

Ans. I have no recollection of it.

By same. Were you not one of the members of the City Council of Newport, Kentucky, when said city had the suit with Taylor's heirs, in 1850, in reference to the Newport ferry?

Ans. Yes, I was.

By same. Have you not always been, and are you not now, a zealous advocate of the Commodore, and against the right claimed by Taylor's heirs, in regard to the Newport ferry?

Ans. I am a zealous advocate for the Commodore; I have only opposed the claims of the heirs of Taylor on principle, believing that no one ought—has exclusive right to navigate the Ohio river.

By same. Were you, or were you not, a candidate for the Kentucky Legislature, last year, and advocated the claims of the Newport ferry-right, against the claim of Taylor's heirs?

[451] Ans. I was; and advocated it on the same principles as stated above.

And further sayeth not.

F. A. MILLER.

The ordinances referred to in the foregoing deposition as Exhibit "C C," are inserted after the Exhibit "D D" of the next deposition.

[Deposition of Jno. Simmons.]

The deposition of John Simmons, taken on the 2d of June, 1854, who deposeth, &c.

Question by attorney for Newport:

State what knowledge you have of the income and costs of running the steam ferry-boat between Newport and Cincinnati, in 1850, or any part of that year, and the original cost of the boat, and value thereof, when worn out; and annex to your deposition any statistics you have showing the above facts.

Ans. Capt. Air left here on the 6th day of May, 1850, to go to Scotland, and *ret.* the 1st of August, and left me in full charge of his boats; and the annexed statements, signed by me, and marked "D D," is an account of my receipts, and cost, as stated, for running the boat, and also the original cost of the boat, which I believe to be correct.

By same. How long and how intimately have you known the ferry run by the plaintiffs?

Ans. Since the year 1835, and been engaged on them *mostly* of the time since that time.

[452] By same. State whether the steamer Commodore was run by Wolff and others, under the authority of the United States,

before and at the time she was enjoined by plaintiffs; also whether she was fitted up according to law.

Ans. She was fitted according to law, which her license will show.

By same. State who were the owners of the Commodore at the time she was run and enjoined in this suit, and whether any person else had any interest in her, and especially the other defendants in this suit.

Ans. Ernst F. Klinschmidt, Bernard Delmar, Joseph Schenburg, Daniel Wolff, Thomas Dadsworth, they were the only owners. The other party enjoined had no interest in her at all.

By same. State whether the time you collected, in 1850, was a fair average of the year, or was it a dull part of the year in the business of ferrying at Newport?

Ans. *I* was a dull part of the year, the farmers being busy at home tending their crop, and there being but little travel, but a good deal of marketing; but little transient traveling.

Cross-examined by plaintiff, Taylor.

Does not the monthly estimate of receipts for the ferry, as [453] stated by you, include the ferriage of those who pay by the month?

Ans. It includes a part of the monthly ferriage.

By same. Did you not, as engineer of the Commodore, run the said boat from the foot of East Row street to Cincinnati, after the injunction had been granted, in January last, by Judge Duvall, against her?

Ans. Yes, I did.

By same. What number of passengers and wagons were crossed in said boat, from the time she commenced running at East Row, after the injunction was granted, until she was removed down to Monmouth street.

Ans. I do not know.

By same. What passengers or teams were crossed by you from the Newport shore to Cincinnati, during that time?

Ans. I cannot tell what passengers, but we crossed Mr. Wolff's team, during that period.

By same. How often did you cross Mr. Wolff's team, during that period?

Ans. From two or three times a day, for two or three weeks.

By same. Do you state positively that you never took passengers from the Kentucky shore to Cincinnati shore, on said boat, during the period above named, whilst you run the boat from East Row street?

Ans. There has men crossed on her, but they have jumped on [454] after she left the landing.

By same. Were there no other persons crossed on her, except those who jumped on her?

Ans. There has.

By same. Was not the boat landed, at the time, at East Row street, after you commenced running the Commodore, after the injunction was granted, and for the purpose of taking in and discharging passengers and wagons?

Ans. Yes, she landed there for both purposes; and especially after Wolff's team commenced running; it landed there for him.

Direct resumed. Do you mean that the Commodore, when run to East Row street, took passengers, &c., from the Kentucky side equally as she did from the Cincinnati side? State also whether the Commodore was the running under a ferry license from the authorities of Ohio.

Ans. No, she did not take from this side equal to the other. I do not know that she had a ferry-license only from hearsay.

And further saith not.

J. J. SIMMONS.

[Statement of J. J. Simmons.]

The statement of J. J. Simmons, referred to in his deposition as Exhibit "D D," is as follows, viz:

Statement of the daily receipts of Capt. R. Air's ferry-boat at [455] Newport, as taken in and collected by John Simmons, from May 6th, 1850, to August 10th, 1850.

May	6,	$66 00	May	28,	$40 00
"	7,	50 00	"	29,	30 00
"	8,	39 00	"	30,	40 00
"	9,	52 00	"	31,	45 00
"	10,	29 00	June	1,	113 00
"	11,	49 00	"	2,	84 00
"	12,	83 00	"	3,	85 00
"	13,	45 00	"	4,	68 00
"	14,	31 00	"	5,	70 00
"	15,	36 00	"	6,	50 00
"	16,	47 00	"	7,	36 00
"	17,	46 00	"	8,	57 00
"	18,	68 00	"	9,	47 00
"	19,	85 00	"	10,	56 00
"	20,	89 00	"	11,	47 00
"	21,	53 00	"	12,	52 00
"	22,	41 00	"	13,	50 00
"	23,	45 00	"	14,	52 00
"	24,	35 00	"	15,	50 00
"	25,	53 00	"	16,	59 00
"	26,	78 00	"	17,	35 00
"	27,	42 00	"	18,	43 00

June 19,	$54 00	July 24,	$31 00
" 20,	42 00	" 25,	49 00
" 21,	41 00	" 26,	49 00
" 22,	47 00	" 27,	41 00
" 23,	47 00	" 28,	43 00
" 24,	47 00	" 29,	41 00
" 25,	51 00	" 30,	41 00
" 26,	53 00	" 31,	41 00
" 27,	25 00	August 1,	73 00
" 28,	23 00	" 2,	62 00
" 29,	42 00	" 3,	98 00
" 30,	48 00	" 4,	63 00
[456]		" 5,	55 00
July 1,	87 00	" 6,	51 00
" 2,	74 00	" 7,	51 00
" 3,	69 00	" 8,	52 00
" 4,	65 00	" 9,	51 00
" 5,	45 00	" 10,	75 00
" 6,	72 00		
" 7,	44 00		
" 8,	49 00		
" 9,	27 00		
" 10,	40 00		
" 11,	28 00		
" 12,	27 00		
" 13,	41 00		
" 14,	40 00		
" 15,	41 00		
" 16,	32 00		
" 17,	44 00		
" 18,	28 00		
" 19,	42 00		
" 20,	45 00		
" 21,	49 00		
" 22,	43 00		
" 23,	33 00		

The cost of running the ferry-boat of Capt. R. Air, per week in 1850, was as follows:

For services of captain, per week, - -	$12 00
[457] " " engine, per week, - -	7 00
" " " Pilot, - - - -	6 00
" " " Deck-hand, - - -	5 00
" " " Carpenter, - - -	10 00
Coal, 50 bushels per day, cost 10 c., per day, - - - - - -	$5 00 35 00

The original cost of the steam ferry-boat, -	$6,000
She lasts six years, and is worth, when torn up, her machinery, &c., - - - - -	2,500
	$3,500

The above weekly costs of running the boat are based upon the knowledge of said Simmons, derived when collector.

The above and foregoing statement of receipts and costs are correct, but there was a good deal of ferriage not paid to the undersigned during said time, from May 6th, 1850, to August 10th, 1850, as there was a good deal of monthly ferriage and special contracts, that the parties preferred to settle with Captain Air himself.

J. J. SIMMONS.

[Order of City Council.]

CITY OF NEWPORT, KY.
Council Chamber, May 27th, 1851.

The following order was entered, viz:

[458] "The rules were suspended for having a proposition from Maj. Taylor, for an alteration of the grade, and improvement of the wharf on the Ohio known as the ferry landing, which was referred to the committee on improvements."

CITY OF NEWPORT, KY.
Council Chamber, June 4th, 1851.

The committee on internal improvement, to whom was referred the subject of improvement of the wharf at the foot of York street, submitted a report recommending the proposed improvement, and a plan or profile of the same, prepared by the City Engineer, and suggesting that the costs of the same be defrayed by an appropriation from the public treasury, together with what may be subscribed by individuals, and recommending the adoption of the following resolution, to wit: *Resolved*, that subscription *passers* be circulated to solicit donations for the improvement of the above-named wharf, and that the Council have the same improvement made as soon as practicable. The estimate of the costs of the same, submitted to the committee by the Chief Engineer, and reported by them in said report, was $4,000, more or less.

[459] Whereupon, upon motion of Mr. Fearons, the said report was received, and ordered to be laid on the table.

Council Chamber, Newport, Ky., July 22d, 1851.

A motion was made to appropriate ($1,000) one thousand dollars towards the improvement of the wharf at the foot of York street.

On motion of Mr. Fearons, the same was laid on the table for one week.

Council Chamber, August 5th, 1851.

Mr. Ross called for the reading of a resolution offered by him, July 22d, 1851, in relation to appropriating $1,000 for the improvement of the wharf at the foot of York street.

Whereupon, Mr. Hayman moved that an election be held, on Saturday next, at the Court House, for the purpose of taking the votes of citizens, who are qualified voters, both for and against said resolution.

CLERK'S OFFICE,
City of Newport, Ky.

I, R. H. Hayman, Clerk of the City of Newport, do hereby certify that the above four orders are true copies of the record of the City of Newport, relating to the repairing of the foot of York street, in the year 1851.

[460] R. H. HAYMAN, City Clerk.

[Order granting appeal.]

Whereupon, all the defendants pray for an appeal from the above judgment, to the Court of Appeals, which is granted them by their executing bond, with good securities to the plaintiffs, in thirty days, conditioned according to law.

[Supersedeas Bond.]

Which bond is as follows, viz:

PETER CONWAY, JOHN J. SIMMONS, JOHN SEBREE, ERNST KLINSCHMIDT, BERNARD DELMAR, JOSEPH SCHENBURG, THOS. DADSWORTH, and DANIEL WOLFF, appellants,

against

JAMES TAYLOR, executor of JAMES TAYLOR, deceased, and ROBERT AIR, appellees.

Upon an appeal from a judgment of the Campbell Circuit Court, rendered on the 2d day of August, 1854.

Whereas, said appellants have taken an appeal from a judgment of the Campbell Circuit Court, rendered (by agreement in vacation) and entered upon record by the Clerk of the Campbell Circuit Court, on the 2d day of August, 1854, against them and the President and Common Council of the City of Newport, in favor of the appellees, perpetually enjoining them therein from landing the boat called, in the pleadings and proof, the "Commodore," or any other [461] boat or vessel, upon that part of the Kentucky shore of the Ohio

river lying between the lots of the City of Newport and the Ohio river, designated upon the plat of the Town of Newport as the "Esplanade," and including the whole open space so designated, for the purpose of receiving or landing either persons or property, ferried from, or to be ferried to the opposite shore of the Ohio river, adjudging against all the defendants in said action, that the entire privilege and franchise of ferrying persons and property to and from said part of the Kenuckty shore of the Ohio river in the plaintiff alone, and further adjudging against these appellants, that the receiving of persons, animals, carriages, wagons, carts, drays, or any other kind of vehicle, either loaded or empty, upon said boat, or any other vessel, at said part of the Kentucky shore, for the purpose of being transported or landed upon the opposite shore of the Ohio river, and the landing of persons, animals, and the kind of property above described, which had been received upon said boat or other vessel, at or from the opposite shore of the Ohio river, and transported across said river upon said part of the Kentucky shore, is an infringement of the ferry franchise of [462] the said appellees, and embracing all persons claiming under said appellants in said injunction, and further adjudging, that Charles Daniel, the master commissioner, shall ascertain the amount of fees or compensation received by appellants, or either of them, or their agents, for transporting persons and property to and from said esplanade, across the Ohio river, and for the purpose of making such ascertainment, he may examine, on oath, any of the appellants that the appellees may desire to be so examined, and hear such other proof as may be produced before him, touching the gross amount of compensation received for such transportation, and also ascertain the additional cost and expense which the appellees, or either of them, would have been compelled to incur to have transported the persons and property across the said river, which the appellants, or either of them, did so transport, and dismissing the counter claim of appellants for damages; and further adjudging, that the appellants pay the appellees their costs expended in this action, and the appellants desire to supersede the part of said judgment above mentioned.

[463] Now, we, Peter Conway, John J. Simmons, John Sebree, Ernst Klinschmidt, Bernard Delmar, Joseph Schenburg, Thomas Dadsworth, and Daniel Wolff, principals, and F. Weber and Henry K. Lindsey, sureties, hereby covenant with and to the appellees, James Taylor, executor of James Taylor, deceased, and Robert Air, that the appellants shall pay to the appellees all costs and damages that may be adjudged against the appellants on the appeal, and also that they will satisfy and perform the said part of the judgment before recited, in case it shall be affirmed, and any judgment or order which the Court of Appeals may render, or order to be ren-

dered, by the inferior Court, not exceeding in amount or value the sum of twenty-five hundred dollars, and also pay all rents, hire, or damages, which, during the pendency of the appeal, may accrue to the appellees by reason of this suit, in any way whatever. Witness our hands, this 12th day of August, 1854.

D. WOLFF, [SEAL.]
F. WEBER, [SEAL.]
HENRY K. LINDSEY, [SEAL.]

Teste,
G. ARTSMAN, D. C.,
For B. BEALL, Clerk.

STATE OF KENTUCKY,
Campbell Circuit Court. } Sct.

I, Benjamin Beall, Clerk of the Campbell Circuit Court, do certify that the preceding four hundred and sixty-seven pages (accompanied by five plats of the Town of Newport, marked 1, 2, 3, 4, and 5, and a copy of the record of the trustees of the Town of Newport against James Taylor, with the opinion of the Court of Appeals Attached thereto, also a copy of the will of Gen'l James Taylor, and codicils) contain a full and complete transcript of the record and proceedings in the case therein mentioned, (except the original plat of the Town of Newport of 1791, which, owing to its dilapidated condition, could not be copied, and the record of the City of Newport against James Taylor's heirs, with the opinion of the Court of Appeals, rendered March 11, 1851.)

Given under my hand this 27th day of October, 1854.

BENJ. BEALL, Cl'k, C. C. C.
By GUS. ARTSMAN, D. C.

The following is an exhibit filed with the foregoing transcript.

STATE OF KENTUCKY,
Kenton Circuit. } Sct.

Pleas before James Pryor, Judge of the Kenton Circuit Court on the 10th day of Sept., 1850.

July Term,

JAMES TAYLOR, JOHN W. TIBBATTS, and ANN W. TIBBATTS, his wife, GEORGE T. WILLIAMSON and JANE M. WILLIAMSON, his wife, HORATIO T. HARRIS and KETURAH L. HARRIS, his wife, the said ANN W. JANE M. and KETURAH L., being the daughters of James Taylor, dec'd, — Pl'ffs.

against

THE PRESIDENT and COMMON COUNCIL OF NEWPORT. — Def'ts.

Upon writ of error from, &c.

[Order for Ferry.]

Be it remembered, that on the day of February Term, 1850, the following order was rendered, viz:

This day came the President and Common Council of the City of Newport, and moved the Court to grant them a ferry across the Ohio river to the City of Cincinnati from Newport, and thereupon Horatio T. Harris, who married one of the heirs of Gen'l James Taylor, dec'd, by his counsel, entered his appearance, and resisted the motion, and objected to the introduction of a copy of the original plan of Newport, and also moved for a continuance of motion till next term, [2] which motions were overruled by the Court, and *said* motion being fully heard, and it appearing to the satisfaction of the Court that said City of Newport has the legal title to and is the owner of the public landings and grounds on the Ohio river, in front of the lots, &c., of said city, and it further appearing to the satisfaction of the Court that a ferry is needed from said landings and grounds over the Ohio river to the opposite shore, it is ordered that a ferry be and is hereby established from said landings and grounds over the Ohio river in the name of said President and Common Council of said City of Newport, and their successors, for the benefit of said city, upon their executing bond in the penalty of $2000, conditioned as the law directs, with F. A. Miller and O. M. D., securities, and that they be allowed to charge the following rates, viz:

For every horse or mule, 5 cents; for every coach, wagon, or chariot, and the driver, 30 cents; for every 4-wheeled chaise, phaeton, and the driver, 20 cents; for every hogshead of tobacco, 5 cents; for every head of neat cattle, 5 cents; for every sheep, lamb, goat [3] or hog, 1 cent; for every person.

A copy. Attest.

JAMES H. PARKER, D. C. Campbell C. C.

The following is the writ of error.

JAMES TAYLOR, JNO. W. TIBBATTS and ANN W. TIBBATTS, his wife, GEORGE T. WILLIAMSON, and JANE M. WILLIAMSON, his wife, HORATIO T. HARRIS, and KETURAH L. HARRIS, his wife, (the said ANN W. JANE, and KETURAH, being the daughters of Gen'l James Taylor, dec'd.)	Appellants.
against	
THE PRESIDENT and COMMON COUNCIL OF THE CITY OF NEWPORT.	Appellees.

The appellants aforesaid, and each of them say, that they are aggrieved by the decision of the County Court of Campbell in granting to the appellees the franchise of a ferry from the public grounds or landing on the Ohio, opposite the City of Newport, as set forth in the annexed and foregoing record and proceedings of said County Court; and they further say, that there is error to their prejudice in the said record and proceedings, as follows, to wit:

1. No notice was given by the said President and Common Council of the said City of Newport, or by the said County Court, or by any person whatever, to the said appellants, or either of them, of the [4] time, place, or intention of the said President and Common Council, of applying or making a motion to the said County Court of Campbell, for the granting of said ferry, franchise, or privilege; and for this the appellants and each of them have been and are aggrieved by the said decision or order of the County Court granting the same.

2. The said County Court in and by virtue of the said order granting said franchise or ferry privilege as aforesaid, have not specified or designated any plan or spot of ground or landing on the Ohio river, opposite the said city, at which the said ferry is or is to be established, or at or from which, boats crossing the said Ohio river shall or are to embark or land, and in this the appellants, and each of them, were and are aggrieved.

3. The said President and Common Council of the said City of Newport have not, and the time of obtaining the said order of the said Court granting said ferry, and of the granting of the same by said County Court, had not the legal title to, and the said President and Common Council are not, and at the said time were not the [5] owners of the public landings and grounds on the Ohio river in front of the lots, &c., of said city, where said ferry was established, and in this the appellants, and each of them, were and are aggrieved.

4. The said President and Common Council, and at the time of granting said ferry privilege, or franchise, to them by said Court, were not the owners or holders of the legal title to the land on which and where the said ferry was and is by the said order of said Court established, and in this the appellants, and each of them, were and are aggrieved.

5. The said President and Common Council have not, and at the said time when, &c., had not any interest, legal or equitable, to the land on which and where the said ferry by said order was and is established, and in this the said appellants, and each of them, were and are aggrieved.

6. The said County Court erred in refusing to continue the motion of the said President and Common Council, to establish said ferry, on the application for that purpose of the said Horatio T. Harris, and in this the said appellants, and each of them, were and are aggrieved.

[6] 7. There was no legal or sufficient evidence before the said County Court, to authorize the granting and establishing of said ferry to said President and Common Council, and in this the appellants, and each of them, were and are aggrieved.

8. The said appellants, and each of them, further say, and assign for error in this behalf, that at the June Term of the said County Court, in the year 1830, a motion or application was made to the said County Court, by the Trustees of the Town of Newport, for the granting and establishing of a ferry, at the identical place where the said order of the said County Court, at the said February Term, 1850. The ferry was granted and established, the said trustees then and there claiming to have been the owners of the legal title to the public landings and grounds on the Ohio river, in front of the lots, &c., of said City (then Town) of Newport, which said motion was, at the time, when, &c., as aforesaid, refused by the said County Court, and the application of said trustees, for said ferry was overruled; the said county then and there, having jurisdiction of the said motion or application that an appeal was [7] prayed and taken by the said trustees from the order or judgment of said County Court, refusing the said motion, and overruling said application, (and there have jurisdiction of the said motion or application,) the Court of Appeals of this Commonwealth.

Whereupon such proceedings were had in and by said Court of Appeals, at the June Term, 1831, whereby the said order and judgment of the said County Court, refusing the said motion of the said trustees, to grant and establish said ferry, and overruling their application for the same, was by the said Court of Appeals affirmed; and the said appellants, and each of them, further say, that by an Act of the General Assembly of this Commonwealth, entitled "An Act amendatory of the acts, relating to the Town of Newport, in Campbell county, approved February 24th, 1834," and by the second section thereof, were vested in one principal officer, denominated the Mayor, and in six persons called trustees, who, together with the said Mayor, should form a Board, to be denominated the Board of the Mayor and Trustees.

That by the ninth section of said recited Act, entitled, &c., approved, &c., as aforesaid, it was further enacted, that said [8] Board of Mayor and Trustees, among other things, should have and possess all the powers and authority theretofore; that is to say, before the passage of said act, vested in the trustees of Newport, either by the general laws of this Commonwealth, or the particular laws then in force, in respect to said town; and that by the nineteenth section of said recited act, entitled, &c., approved, &c., as aforesaid, it was further enacted, that all the rights, privileges, and property, real and personal, and choses in action, which were, at the time of passing said act, vested in the trustees of Newport, should, as soon as said Mayor and Board of Trustees

might be organized, be vested in and belong to said Town of Newport, should subject to the payment of all just demands, which might exist against said trustees, and for which they were responsible. And the said appellants, and each of them, further say, that afterwards, by an Act of the General Assembly of this Commonwealth, entitled, "An Act to repeal in part an act amendatory of the several acts relating to the Town of Newport, in Campbell [9] county, approved February 24th, 1834, and also amendatory thereof," which last-mentioned act was approved February 29th, 1836, and by the seventh section of the last-mentioned act, it was enacted, that it should be the duty of the trustees, of the said Town of Newport, and in every year, to elect from their own body a President of the Board of Trustees, whose duty it should be to preside over the deliberations of said board, preserve order, and convene the board whenever he might think proper; and the actings and doings of said board should be known and distinguished by the name and style of the President and Trustees of the Town of Newport. And the appellants, and each of them, further say, that afterwards, the General Assembly passed another act, entitled "An Act for the benefit of the Town of Newport, approved February 21st, 1849, by the second section of which it was enacted, that the name and style of the Town of Newport should be changed to that of the City of Newport; and the name and style of the President and trustees of said town should be changed to that of [10] the President and Common Council of the City of Newport. And the said appellants, and each of them, further say, by an Act of the said General Assembly, entitled "An Act to establish the Town of Newport, approved December 14th, 1795, and the first section thereof, the land comprehending the said town, agreeably to a plat made by John Roberts, deputy Surveyor of the county of Campbell, on a re-survey of said town, the 20th of August, 1795, and lodged in the office of said county, to be recorded in the Court of said county, was thereby vested in Thomas Kennedy, Washington Berry, Henry Brasher, Thomas Lindsey, Nathan Kelly, James McClure, and David Duggan, who were thereby appointed trustees for the same, without succession, except such parts as were in said act thereafter excepted; and the said appellants, and each of them, further say, by the seventh section of said last-mentioned act, it was enacted and declared that such part of said town, as lies between the lots and the rivers Ohio, and Licking, as would appear by reference to said plat, should forever remain for the use and benefit of said town, for a common, reserving to James Taylor, [11] and his heirs and assigns, every advantage and privilege which he had not disposed of, or which, by law he would be entitled to. And the said appellants, and each of them, further say, that by the order and judgment of said county Court, and by the judgment of said Court of Appeals, hereinbefore specified, and

mentioned, affirming the same, in the said appeal of the said Trustees of Newport, as aforesaid, and in which the said trustees were the appellants, and James Taylor was the appellee, the said President and Common Council of the City of Newport were and are bound, and precluded from prosecuting, or any other, or further motion, suits, *plaint*, or application to or before the said county Court of Campbell, touching or concerning the granting or establishing a ferry to be granted to the said President and Common Council, or from the granting a ferry-franchise, or privilege, or any part or parcel of the land, bordering on the Ohio river, or on the public landings, or grounds thereon, opposite to or in front of the lots, &c., of the said City of Newport. And the said appellants, and each of them, do now plead, and rely on the said order, and [12] judgment of the said county Court, and on the said judgment of the Court of Appeals, affirming the same in bar of the motion, or application, were, by the said President and Common Council, at the February Term, 1850, aforesaid, and in bar of the proceedings of the said county Court, granting and establishing said ferry to the said President and Common Council, at the said last-mentioned term, and in bar of the order and judgment of said Court, granting and establishing the same, and in bar of the further prosecution by said President and Common Council, in the county or Circuit Court of Campbell county, or elsewhere, of any suit, motion, plaint, or application, touching or concerning the granting and establishing of said ferry, or the granting of any ferry-franchise or privilege whatever, on or annexed to the land, public landings, or grounds, on the Ohio river, opposite to and in front of the lots, &c., in the said City of Newport. And the said appellants, and each of them, further say, that because of the granting and establishing of said ferry to the said President and Common Council, notwithstanding the said bar of the said judgment of the [13] said Court of Appeals in the premises, the said appellants, and each of them, were and are aggrieved.

9. The appellants, and each of them, further say, and assign for error in the record and proceeding of said county Court, at the said February Term, 1850, granting and establishing the said ferry to the said President and Common Council, that a majority of the Justices of the County Court of Campbell were not, at the time of making the said order, granting and establishing said ferry, and at the time of granting the same, present, and acting in said Court, and that less than a majority of the Justices of said county had no jurisdiction to grant and establish the same, and in this the said appellants, and each of them, were and are aggrieved.

The appellants, and each of them, further say, and assign for error in said record and proceedings, that by the said act of the said Legislature of this Commonwealth, entitled An Act to establish the Town of Newport, approved 14th December, 1795,

and the section thereof, all the ferry-privileges and franchises touching, concerning, or annexed to the land, on the Ohio river, [14] opposite to and in front of the lots, &c., in the City of Newport, nor the Mayor and trustees of said town, nor the President and trustees of said town, nor the President and Common Council of said city, have, nor had, at the time of granting said ferry to the said President and Common Council, nor ever had any right, title or interest, legal or equitable, in the said land, on the Ohio river, opposite to and in front of the lots, &c., in said city, where the said ferry, by the order of the county Court, at their February Term, 1850, was granted and established.

11. That the appellants, and James Taylor, their ancestor, under whom the appellants claim, have had more than thirty years peaceable and uninterrupted possession of the land opposite to and in front of the lots, &c., in the said City of Newport, at the said February Term, 1850 of said Court, the said ferry was granted and established to the said President and Common Council, and of the ferry-rights, privileges and franchises annexed, belonging and appertaining to the said land, claiming to hold the same adversely against the whole world.

12. The appellants, and each of them, further say and assign for [15] error in said record and proceedings, that the said order of the said County Court granting said ferry-franchises and privileges to the President and Common Council of the City of Newport, was obtained by fraud, combination, secrecy and stratagem, and is, therefore, null and avoid.

13. The appellants, and each of them, further say and assign for error, that the now County Court of Campbell was originally part of the county of Mason, and while the Town of Newport was within the said county of Mason, having full power and authority, did, at the January Term, 1794, of the Mason County Court, upon the motion of James Taylor, of Virginia, the patentee of the land on which Newport is, and was then, situated and located, and the grandfather of a portion of these appellants, established a public ferry from his lands on the Ohio river, were the same in front of the Town of Newport, to have and receive the same fare as is allotted from the opposite shore: and that the said James Taylor, of Virginia, did, on the 8th of June, 1799, execute a deed to James Taylor, the ancestor of these appellants, conveying to him all that tract [16] or parcel of land on which the Town of Newport, as then laid out, was situate, and on which a portion of the present City of Newport is now situated, excepting, however, so much of the tract on which the then Town of Newport had been laid out; and also conveyed, in said deed, all right, title and interest which the said grantor had, or was entitled to, or might thereafter become entitled to, to any ferry or ferries from the said Town of Newport, and every part thereof, over and across the Ohio river and Licking river, with

all and singular the advantages, &c. That at the June Term, 1807, (the county of Campbell having then been established out of a part of Mason,) the County Court of Campbell, in view of the ferry granted by the Mason County Court in 1794, to James Taylor, of Virginia, and in view of the fact that James Taylor, of Virginia, had, in 1799, conveyed to his son, James Taylor, of Kentucky, a fee simple title in said ferry or decree; that James Taylor, of Campbell county, have a ferry established to run in front of Newport, across the Ohio river to the opposite shore, &c. Whereupon the said James Taylor, together with Edmund Taylor, his security, entered into and acknowledged their bond, in the penalty of one [17] thousand dollars, as the law directs; that said James Taylor continued to retain the uninterrupted use and control of the said ferry from that time to his death, in November, 1848. That at the November Term, 1848, of the Campbell County Court, ordered that James Taylor, H. T. Harris, and Keturah L. Harris, John W. Tibbatts, and Ann his wife, and George T. Williamson, and Jane M. his wife, do execute bond as heirs of James Taylor, deceased, required by the Act of Assembly, approved 22d December, 1806, in relation to ferries, with Sam'l Winston, their security, and file the same with the Clerk of this Court within ten days, said parties being the owners of the ferries across the Ohio river from Newport to Cincinnati. So that said appellants, and their ancestor, have had the peaceable and uninterrupted possession of said ferry for fifty years, from authorized grants of the Campbell and Mason County Courts, and have been the owners of said ground in front of Newport; and that said recent order of Campbell County Court, establishing and granting said ferry to the President and Common Council of Newport, is [18] illegal and unconstitutional, being an interference with the acknowledged vested rights of these appellants, as recognized by said Court, since the year 1807.

14. The appellants, and each of them, further say and assign for error, that the whole order and proceedings of the Campbell County Court, granting said ferry to the President and Common Council of Newport, irregular, illegal, invalid, and void, and that said Court erred in each and every order made therein, and erred in permitting the paper and copies of papers offered by the said President and Common Council of Newport, to be read, and erred in not overruling their said motion, and refusing said ferry.

The following is the bond given by Taylor's heirs.

Know all men by these presents, that we, James Taylor, Jno. W. Tibbatts, and Ann W. his wife, George T. Williamson, and Jane M. his wife, Horatio T. Harris, and Keturah L. his wife, and Reuben T. Thornton, are held and firmly bound unto the President and Common Council of the City of Newport, in the penal sum of one thousand dollars, the payment whereof well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly

[19] and severally, firmly by these presents, sealed and dated this 11th day of March, 1850. The condition of the above obligation is such, that whereas the above-bound James Taylor, John W. Tibbatts, and Ann W. his wife, George T. Williamson, and Jane M. his wife, H. T. Harris, and Keturah L. his wife, have prayed for and obtained an appeal to the Campbell Circuit Court, from an order of the Campbell County Court, made at the February Term thereof, in the year 1850, establishing a ferry in the name of the said President and Common Council of the City of Newport, from the public landing and grounds in front of said town, on the Ohio river, across the said river to the City of Cincinnati. Now, if the the above-bound James Taylor, Jno. W. Tibbatts, and Jane W. his wife, George T. Williamson, and Jane M. his wife, Horatio T. Harris, and Keturah L. his wife, shall duly prosecute the said appeal, and with effect, or shall well and truly satisfy and pay the said President and Common Council of the City of Newport, all costs and damages which may be awarded or sustained by them, in case the said order is affirmed, in whole or in part, or the said appeal dis-[20] missed or discontinued, then this obligation shall be void, else to remain in full force and virtue.

JAMES TAYLOR, [SEAL.]
JNO. W. TIBBATTS, [SEAL.]
By his att'y-in-fact, JAS. TAYLOR, [SEAL.]
GEO. T. WILLIAMSON, [SEAL.]
By his att'y-in-fact, JAS. TAYLOR, [SEAL.]
HORATIO T. HARRIS, [SEAL.]
By his att'y-in-fact, JAS. TAYLOR, [SEAL.]
R. T. THORNTON, [SEAL.]

Attest,
J. H. PARKER, D. C.

The following is a power of attorney given by said heirs to Jas. Taylor, viz:

Know all men by these presents, that we, John W. Tibbatts, and Horatio T. Harris, of the City of Newport, and State of Kentucky, and George T. Williamson, of the City of Cincinnati, and State of Ohio, have made, nominated and appointed, and by these presents do make, nominate and appoint James Taylor, of the County of Campbell, and State of Kentucky, our true and lawful attorney for us, and in our names, jointly with himself, to sign an appeal, or supersedeas bond, in the County Court of Campbell county, and State of Kentucky, to appeal the suit wherein the President and Common Council of the City of Newport obtained an order from said County Court, granting them a ferry across the Ohio river from [21] the City of Newport; and we do further authorize our said attorney, for us, and in our names, to sign, seal, and deliver to the

Clerk of said County Court, any bond necessary to perfect an appeal from the County Court to the Circuit Court, in said case, hereby ratifying and confirming whatsoever our said attorney shall, in our names, lawfully do in the premises, by virtue of these presents.

In witness whereof, we have hereunto set our hands and seals, this 9th day of March, in the year 1850.

JOHN W. TIBBATTS, [SEAL.]
H. T. HARRIS, [SEAL.]
GEO. T. WILLIAMSON, [SEAL.]

On which is the following endorsement:
Acknowledged March 9th, 1850.

BENJ. BEALL, D. C.

And thereupon the following summons issued.

THE COMMONWEALTH OF KENTUCKY:

To the Sheriff of Campbell County, greeting: You are hereby commanded to summon the President and Common Council of the City of Newport to appear before the Judge of our Campbell Circuit Court, in the Town of Alexandria, at the Court-house, on the [22] first day of the April Term, 1850, of the said Court, to show cause, if any they can, why an order of the Campbell County Court, establishing a ferry in the name of the said President and Common Council of the City of Newport, from the public landing and grounds in front of said city, across the Ohio river to the City of Cincinnati, all of which was done at the February Term, 1850, of said County Court, should not be reversed, for errors therein contained, as we, from the complaint of James Taylor, John W. Tibbatts, and Ann W. Tibbatts, his wife, George T. Williamson, and Jane M. Williamson, his wife, Horatio T. Harris, and Keturah L. Harris, his wife, (the said Ann W., Jane M., and Keturah L., being the daughters of Gen'l James , dec'd,) are informed; and have then and there this writ. Witness, Benj. D. Beall, Clerk of our said Court, at the Court-house aforesaid, this 11th day of March, 1850, and in the 58th year of the Commonwealth.

BENJ. D. BEALL, Cl'k
By JAS. H. PARKER, D. C.

Endorsement.

This shall enjoin and restrain the said President and Common Council of the City of Newport, and all others, from all further proceedings to carry into effect the order of the Campbell County Court [23] made at the February Term, 1850, establishing a ferry in the name of the said President and Common Council of the City of

Newport, from said city to Cincinnati, until the further order of the Campbell Circuit, bond and security having been taken in my office as the law directs.

Attest. BEN. D. BEALL, Cl'k.
By JAMES H. PARKER, D. C.

Executed the within this 15th day of March, 1850, by delivering a true copy thereof in writing to John Boyd, the President, and James E. Perry, G. W. Soward, Dozier Pines, Upton Clary, R. B. McCrackin, E. L. Southgate, Jno. T. Maffitt, G. W. Hall, and Geo. Allens, Councilmen of the City of Newport, which body is known by the title and style of the President and Common Council of the City of Newport, and also to R. D. Hayman, Mayor of said city.

N. C. McGRAN, D. S.
For THOS. LOGAN, S. C. C.

STATE OF KENTUCKY, Campbell Circuit Court. } Set.

July Term, A. D. 1850.

JAMES TAYLOR, &c., Plaintiffs.

against Appeal.

THE PRESIDENT AND COMMON COUNCIL OF NEWPORT. Def'ts.

[24] This day came the parties by their attorneys, and by consent the venue herein is changed to Kenton Circuit Court, held at Covington, and the Clerk of this Court is ordered to transmit the papers according to law.

A copy. Attest.

BENJ. D. BEALL, Cl'k.
By JAMES H. PARKER. D. C.

KENTON CIRCUIT COURT, July Term, Sept. 2d, 1850.

By consent of parties this cause is set for trial on Saturday next.

On the 3d day of Sept, 1850, the following order was entered:

On motion of plaintiffs, by their attorney, a spos duces tecum is awarded them to the Clerk of the Circuit Court of Campbell, requiring him to bring with him the bill of evidence in the case of the trustees of the Town of Newport, against James Taylor: returnable on Saturday next.

Sept. 7, 1850.

This day came the parties by their attorneys, and the cause being begun, and not having time to get through, adjourned until Monday next.

September 9th, 1850.

Came again the parties pursuant to adjournment, and on motion [25] of pl'ffs, by their att'y, a spo duces tecum is awarded them against X. Seine, Clerk of the City of Newport, to bring with him the records of the city.

Sept. 10th, 1850.

The Court entered the following opinion in this cause:

Upon the applicacion of the City of Newport, the County Court established a ferry across the Ohio river, from the city in its name. Taylor's heirs have appealed from the decision of the County Court.

In 1791 a town was laid out by James Taylor, the elder, at the confluence of the rivers Ohio and Licking; a map of the town was made in 1792, exhibiting an open space between the lots and the rivers.

Between 1792 and 1795, the proprietors sold several lots, and in the year 1795, the town was established by an act of the Legislature. This act vested the title to 180 acres of land in the trustees, with the following reservation: "that such part of said town as lies between the lots and the rivers Ohio and Licking, as will appear by a reference to the said plat, shall forever remain for the use and [26] benefit of the said town for a common, reserving to the said James Taylor, his heirs and assigns, any advantage and privilege which he has not disposed of, or which by law he would be entitled to."

The map presented to the Legislature was not the same as the same just above referred to, but was similar to it in every particular.

It appeared in evidence that the open space had at all times since 1792 been used as a common, and that Taylor and his heirs had, for the last 30 or forty years, constantly the ferry privileges from the town across the Ohio. In 1830 the County Court refused to establish a ferry in the name of the trustees of the Town of Newport.

The order refusing to establish this ferry was sustained by the Court of Appeals, 6th J. J. Marshall. In that case the court Construe the reservation contained in the act of the Legislature, and come to the conclusion that nothing passed to the town in this open space, except the right of common.

That the legal title, and all the privileges appertaining to the land, was reserved to the proprietor, no other construction could have [27] been given to the reservation, if the rights appurtenant to the land, except the right of common, was not reserved, the section of the act containing the reservation meant nothing. I am satisfied with this construction, and if I was not, I would be concluded by the decision of the Court of Appeals. It does not certainly appear that the old map was before the Court of Appeals. I suppose, how-

ever, that it was, as the Court refer to the sales made before the second map was made and before the act was passed. The old map, without the reservation contained in the act of the Legislature, would indicate that this open space passed with the streets and lots to the town, and if there had been no reservation in the act, and nothing showing that such was the intention of the proprietors and purchasers, it would have been clear, as has been settled in many similar cases, that the open space passed to the town.

But this presumption, arising as it does from the face of the map, may be rebutted, and it is competent to show that the proprietor and purchasers understood at the time that this open space was reserved, except as to the right of common. The reservation was [28] contained in the act of the Legislature, establishing the town and passing the title to the trustees. This enactment of the Legislature was accepted by the inhabitants of the town upwards of fifty years ago. They have known that Taylor was in the actual enjoyment of the ferry rights nearly all that time. From these facts it follows irresistibly that the first purchasers understood at the time of the purchase that the rights appurtenant to this open space was reserved, or that the contract was *changes* in 1795, and that the occupants then accepted the title, subject to this reservation. This case is not unlike any other contract made between individuals, and nothing can be more certain than that parties to contracts may change and modify them, and when so changed, that the first agreement must yield to the second. If one gives his bond for title to his land, and afterwards the purchaser accepts a deed deficient in some particulars, the deed will control the land, as the parties are competent, and have the the right to change their contract. Taylor, by his first agreement with the purchasers, might have been compelled to convey the open space. But if he was so bound, he was released [29] from this obligation by the acceptance of the deed or act of the Legislature.

I am therefore of opinion that the County Court erred in establishing a ferry. Wherefore, it is ordered and adjudged that the judgment of the County Court of Campbell be reversed, and that upon the return of this case that the Court dismiss the application. It is further ordered that the city pay to the heirs of Taylor their costs, &c.

September 21st, 1850.

Came def'ts and filed their bill of exceptions herein, which were signed, sealed, and enrolled, and ordered to be made part of the record, as follows, to wit:

[Bill of Exceptions.]

Be it remembered, that on the trial of this cause the def'ts in error introduced first, a patent from Commonwealth to James Tay-

lor for acres of land, at the conflux of Licking and the Ohio rivers, and plaintiffs in error admitted that it covered the ground on which the City of Newport was and is located, including the strips in front of the lots down to low water mark on the Ohio river, viz:

[Patent.]

Edmund Randolph, Esqr., Governor of the Commonwealth of [30] Virginia. To all to whom these presents shall come, greeting, Know ye, that by virtue and in consideration of three military warrants, Nos. 369, 372, 373, issued the 14th day of February, 1780, being issued under the King of Great Britain's proclamation of 1763, there is granted by the said Commonwealth unto James Taylor, a certain tract or parcel of land, containing one thousand five hundred acres, by survey bearing date the 8th day of June, one thousand seven hundred and eighty-five, lying and being in the County of Fayette, in the forks between Licking and Ohio, and bounded as followeth, to wit: Beginning at a sycamore and forked maple, standing on the point between Licking and the Ohio, at their confluence, and running from thence up Licking, binding thereon as it meanders; S. 14, East 40 poles; S. 14, W. 85 poles; S. 24½, E. 76 poles; S. 39, E. 121 poles; to a sugar tree, hopwood and three hickories, on the bank of the creek below the mouth of a *small gut;* then N. 46½, E. 802 poles, to a buckeye on the bank of the Ohio; then down the same binding therein as it meanders, S. 62½, W. 74 [31] poles; S. 39½, W. 200 poles; S. 25, W. 161 poles; S. 40, W. 162 poles; S. 61, W. 120 poles; to the beginning, with its appurtenances.

To have and to hold the said tract of land, with its appurtenances, to the said James Taylor and his heirs, forever. In witness whereof, the said Edmund Randolph, Esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed at Richmond, on the 20th day of April, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Commonwealth the eleventh.

E. RANDOLPH,

A copy. Attest, E. A. MACURDY, R. S. C.

2. President, &c., then called plaintiffs for the original plan or plat of the Town of Newport, dated 14th Feb., 1792, made by Hubbard Taylor, as agent and attorney-in-fact for James Taylor, the patentee of the land, whereupon the plat was produced and Taylor's heirs refused to admit it to be the original produced by them, and presented as evidence by said President, &c., (a copy of which and explanations is hereto annexed, as accurately copied as [32] it could be in its dilapidated form;) they also presented the

plat of John Roberts' re-survey, (a copy is annexed with [map a] endorsements and explanation.)

3. Also, a paper purporting to be a copy of said original plat was also offered by said President, &c., to explain the said original, which was much torn and mutilated, (a copy is hereto attached.)

4. The paper purporting to be a copy was objected to by the President in error, on the ground that it was not a true copy, because, as they said, there was a broken line on the copy *diseg*-nating 66 feet street in front of the lots fronting on the river, with spaces opposite the streets coming down from the back of the town towards the Ohio river, whereas (as they said) the original had not a broken line, but a continuous line.

Whereupon said President, &c., called F. A. Boyd, who testified that he was present when the said copy was made, and took particular notice to see that it was a true copy; and further stated, that it was his best impression that the line referred to on the original map was a *broak* line like that on the copy, but that the original being very old and much torn, and he not recollecting positively, cannot, there-
[33] fore, positively say.

6. Cross-examined. Could not tell whether the spaces in front of the street in the original plat had been filled up since the copy was taken, or not, nor whether there was any difference in the appearance of the ink on that line; was attorney for the Town of Newport in a case of said town against the Campbell County Court for the public square of Newport, and was trying to get what information he could from Gen. James Taylor for the benefit of the town in that case; saw him (Taylor) on the street in Newport, and asked him for the original plat of the town of 1792, made by Hubbard Taylor, attorney-in-fact for James Taylor; he said his son James had it, and to call on him and get it; asked if there were any lots sold under the old plat, and he replied that there was a number; called on James Taylor, Jr., and got the plat of 1792, and took it up to the Campbell Circuit Court two or three times, and that the plat now exhibited in Court, and of which a copy was taken, is the same plat; thinks it is more torn than it was when he had it, or when the copy was made; thinks that some parts of it are gone now; can't
[34] tell exactly what parts, but thinks some pieces are gone that were there when he last saw it, and that the endorsement of terms of the sales cannot now be as easily read as then; the copy was taken last fall in his presence at the Circuit Court, at Alexandria, to be used in the case for the public square by agreement, instead of the original, which was in a bad condition, and which James Taylor, Jr., who was the owner of it, did not like to have exposed to injury by being so frequently taken to Court.

7. Direct resumed.

As long as witness can remember, which is 20 or 25 years, the Town of Newport have had control of the esplanade or strip of

ground between the lots and the river; have claimed it for the use of the town and the public; they have paved the streets down to low water mark, which was done mainly at the expense of the town, but partly by individual subscription and donation; they have made several improvements in order to preserve the bank from washing away, such as driving of piles, &c.; this work was always done under the authority of the town.

8. Foot of York street has been the regular ferry landing for 20 [35] or 25 years back to his knowledge, but that some few times the boat had been driven to land by low water at the foot of East Row street, or rather on a sand bar that puts out into the river a considerable distance from the East Row street, which bar is generally covered with water, but bearing very low water.

9. President, &c., here offered in evidence the deposition of Gen. James Taylor, taken and filed in the case of the Town of Newport *vs.* Campbell County Court for the public square, which is as follows:

The deposition of Gen. James Taylor, of lawful age, taken at the office of Col. James Taylor, in Newport, Campbell county, Kentucky, on the 13th day of October, 1846, by the consent of parties, to be read in evidence on the trial of a suit in chancery, now pending and undetermined in the Campbell Circuit Court, wherein the Town of Newport is complainant, and the Justices of Campbell County Court are defendants taken on the part of the complainant. This deponent, being first duly sworn, deposeth and saith:

1st Question by complainant.

[36] When was the first plat of the Town of Newport made out? and when did the first sale of lots take place in said town?

Ans. I think the first plan of the town was made in 1791, which only embraced a small part of the town as now laid off; there were a few lots sold at private sale in 1791 and 1792, but no public sale took place until September, 1795; from 30 to 50 lots were sold at private sale and given to individuals prior to the public sale in 1795.

2d Question by same. Will you look upon the plat, purporting to be a plat of the Town of Newport, and state whether the same is the one referred to in the foregoing answer, and whether there any lots marked on the same as a public square? State what lots are so designated, and the time when.

Ans. Some of the lots were laid out in 1791, and the conditions which are annexed, signed in 1792, (Feb.,) and the plat is the one referred to in the foregoing answer.

The lots numbering from 79 to 84, inclusive, was written on it—public square—both my brother Hubbard and myself always contem-[37] plated to endeavor to have a seat of justice at this place, but the square, embracing lots from 79 to 84, were not intended for a public square, except in case the seat of justice was fixed at this place, as far as I now recollect; I do not recollect when the words "public square" were written on the plat, but rather think it was

in my own hand-writing, and written, I think, after I had proposed to the Justices of the County Court and Quarter Sessions to donate the same to the County Court Justices, if they would fix on Newport as the seat of justice, and, I think I had the plat with me at Wilmington at the time the Court met to fix the seat of justice.

3d Question by same. State whether the six lots designated on the plat of 1792 as a public square, was or was not, designated as such before the execution of the deed from you as the attorney-in-fact for James Taylor, Sr., to the Justices of Campbell Court.

Ans. I have no doubt that, that said block of lots had the words public square written on them before the execution of the deed to the Justices of the County Court, for I had declared to the said Justices, when the first Court was held in Wilmington, in June, 1795, [38] that I would donate the said half square of lots to the County Court Justices, if they would fix on Newport as the seat of justice.

4th Question by same. Will you state whether or not said square was ever used as a burying ground? if so, what cause was that portion of the town selected for that purpose? was it so used?

Ans. There was no ground laid off in the town, either by myself or my brother Hubbard, for a burying ground. And some deaths having taken place, some persons were buried there, among whom I only recollect one person, to wit: Boazdell Allcock, who died in my employment, and died about the 1st of January, 1794, and I think was the first person of any age who died in the town, and I caused him to be buried on said ground, but it was never contemplated by me or my brother as a burying ground for said town; other persons might have been buried there, of which I have no knowledge, but I never gave any consent, except in the case of Allcock, who I had buried there myself.

5th Question by same. Will you state whether the re-survey [39] and plat made out by John Roberts, in 1795, represents the public square, or lots numbering from 79 to 84, inclusive, are the same as laid down on the plat of 1792, under which the said private sale of lots took place.

Ans. It is the same half square, being written on them in my own hand writing, containing lots from 79 to 84, inclusive, but not numbered as in the original plan.

6th Question by same. Will you state at what time the commissioners met at Wilmington for the purpose of locating the county seat?

Ans. No commissioners were appointed for that purpose, but the Justices of the County Court and Quater Session Justices fixed on the county seat, when they sat at Wilmington, in 1795, in the month of June.

7th. Question by same. Do you know whether the citizens of the Town of Newport have been in the habit of using said square for their public meetings and for other purposes?

Ans. Public meetings have been often held in the Court house, [40] and the same has been used for religious and political meetings, and town meetings.

Question by defendants' counsel. Whilst the county seat was at Newport, did not the jailor of the county reside upon the premises, and have the care of the grounds and buildings, as an officer of the Court, and was not any use made of them by the people of the town, under his permission?

Ans. Yes, I think it was, as the jailor had charge of the ground and public buildings.

By same. Did the original plat, above referred to, as laid off in 1792, contain any public square whatever?

Ans. At the time my brother laid off the ground, in 1791, and made the plat in 1792, I do not believe he contemplated making said half square of lot a public square, either for town or county purposes, but were laid off and numbered as other lots, and no public square was designated at that time—that is, in 1792.

By same. Did the original plat, or any other plat of the Town of [41] Newport, exhibited at any sale, public or private, represent the above-named block of lots as a public square belonging to the Town of Newport, or the trustees of said town, and was such representations, at any such sales, made to the purchasers of lots?

Ans. No plats of the town ever represented to purchasers of lots that said square belonged to the town, or the trustees of it, nor did I ever represent to purchasers of lots that said square belonged to the town, or the trustees thereof, to the best of my knowledge and belief.

Question by same. Did your brother Hubbard, as attorney-in-fact for your father, at the time of the survey and laying out of said town, dedicate, cede, or convey said six lots, as a public square, to the Town of Newport.

Ans. To the best of my belief, he did not.

By same. Were the said six lots marked as a public square, for the Town of Newport, or the county of Campbell, or for any other body, at the time of drawing of said original plat of said town, viz: on the 14th of February, 1792?

[42] Ans. I was not in the county in February, 1792, but came to the county early in May, 1792, and the first time I saw the plat said square was not marked as a public square, to the best of my knowledge and belief, and it was afterwards put on in consultation with my brother, believing that we could get the seat of justice at the place whenever we could get a county cut off from Mason and Scott, so as to make this control on the river, and I think the words, public square, were written on the plat about the time the Justices of the County and Quarter Session Justices sat at Wilmington, in June, 1795, aforesaid.

By same. Was there any public sale of lots in June, 1792, or at any other time before September, 1795?

Ans. There was not any public sale of lots until September, 1795.

By same. Was the said block of lots ever intended by the original proprietor as a public square for the use of the Town of Newport?

Ans. My belief is, it never was, but said block of lots was offered to the County Court as a public square, as an inducement for them to fix the seat of justice at this place.

[43] By same. Were not said lots the private property of your father, in the same manner as other lots in the town, until the execution of the conveyance to the Justices of the County Court?

Ans. They were his private property—that is, I so considered them.

By same. Was said block of lots ever represented by yourself or brother, to purchasers at any private sale, as a public square belonging to the town?

Ans. I never made any such representations to purchasers, to the best of my knowledge, that it was the property of the town, nor do I believe that my brother ever did.

Witness states that he was present when Gen. Taylor's deposition was taken, and heard him make the statement therein contained, and believes he (Taylor) wrote some of the answers with his own hand.

Cross-examined.

10. Was present when the deposition was taken, and knows it contains the statements of Gen. Taylor, deceased, on that occasion, and believes he wrote some of the answers himself, and all of them were put down in his presence, as he stated them. Col. Jno. W. [44] Tibbatts wrote part of the answers; think the deposition was taken in the after part of the day. He has filed no exceptions to the deposition, but believes his co-counsels in that case have; believes the deposition is not signed by Gen. Taylor, but heard him make the statements contained therein. Knows that the Town of Newport has had full control of the grounds in front of the lots, down to low water, ever since he can recollect; made improvements for public landings by continuing the streets to low water mark; also to preserve the esplanade, or river bank, from washing away; was town attorney two years, and knows that the board of trustees have had control of the ground. Can't tell precisely how far it is from the lots fronting on the esplanade to the edge of the bank, but knows that it has washed away very much since his recollection, making it difficult in some places to pass along with a wagon or dray; don't know how wide the space is between the lots and the edge [45] of the bank, never having measured it; don't know whether it is thirty feet, but believes that in some places it is that wide, while

in others it is not more than ten or fifteen feet wide; bank has washed away within a few years back a great deal; don't know how far it is from the edge of the bank to low water mark; never saw it measured, and can't tell, but in some places it is more and in some less.

Wm. B. Ross states that he was present when the plat of 1792 was made, that said plat and the copy now in Court are the same, and that the copy was a true copy of said plat; that his attention was particularly directed to the plat of 1792 and the copy, that he particularly and critically examined both, tracing the several lines and compared the endorsements, and that he believes they were then alike, as near as could be made, and according to his recollection, that the copy was exact.

Cross-examined:

Does not know that his attention was more particularly directed to one part of the original plat and copy than another, but was particularly directed to every part; that he traced every line upon [46] each, comparing them together, and as the original was read by the clerk who made the copy.

Witness held the copy, and found the endorsements, words, figures, and names, to be the same on both; states that his recollection of the comparison is so distinct and clear, that he thinks he could not be mistaken, and states that the copy was a true one; will not say that the original has been altered, but leaves it for men to judge.

It was also proved that the streets had been worked to the river from an early day, and that some of them had been paved and graded to the river for about sixteen years. That Gen. Taylor and his heirs had contributed, in common with other citizens, to the improvement of the streets, &c.

President, &c., then introduced divers deeds for lots made in 1793-4-5, which are as follows:

This indenture, made the 9th day of December, 1793, between James Taylor, of the County of Caroline and State of Virginia, of the one part, and John Bartle, of the County of Mason and State of Kentucky, of the other part, witnesseth, that for and in consideration of the sum of sixty pounds, by the said John Bartle to the said James Taylor in hand paid, the receipt of which is hereby acknowledged, he, the said James Taylor, has granted, bargained and sold, and by these presents doth grant, bargain, and sell unto John Bartle, his heirs and assigns, certain lots in the aforesaid Town of Newport and County of Mason, viz: Twelve outlots of three acres each, and known in the plan of said town by the following numbers, to wit: 1, 2, 3, 4, 5, 6, 9, 12, 16, 17, 23, and 24, adjacent to the said Town of Newport, with all improvements and

privileges appertaining to the said lots. To have and to hold said lots and premises, hereby conveyed, and every part thereof, with the appurtenaces, unto the said John Bartle, his heirs, and assigns, forever, to his and their own use; and the said James Taylor, Sr., for himself and his heirs, doth covenant and grant, to and with the said John Bartle, his heirs and assigns, that he, the said James Taylor, Sr., and his heirs, the lots and premises is hereby conveyed and every part thereof, unto the said John Bartle, his heirs and assigns, against him the said James Taylor, Sr., his heirs and all and every other person whatsover, shall and will warrant and forever defend by these presents. In witness whereof, the said James Taylor hath hereunto set his hand and seal, by his lawful attorney-in-fact, the day and year above written.

JAMES TAYLOR, Jr., [SEAL.]
Attorney-in-fact,
JAMES TAYLOR, Sr., [SEAL.]

Sealed and Delivered in presence of

Jno. Pennington Smith,
Robt. Kean,
Henry Breashear,
Boazdell Allcock.

On which is the clerk's certificate, viz:

At a Court held for Mason county, the 28th January, 1794, this indenture of bargain and sale from James Taylor, Sr., to John Bartle, was acknowledged by James Taylor, Jr., attorney-in-fact for the said James Taylor, Sr., and ordered to be recorded.

Teste, T. MARSHALL, Jr., C. M. C.
JOHN JAMES KEY, Cl'k M. C. C.

Clerk's fee, 75 cts. A copy. Attest.

Also, a deed from Taylor to N. Kelly, viz:

This indenture, made the 24th day of January, 1794, between James Taylor, of the County of Caroline and State of Virginia, of the one part, and Nathan Kelly, of the State of Kentucky, County of Mason, and Town of Newport, of the other part, witnesseth, That for and in consideration of the sum of twenty pounds, current money of Kentucky, by the said Nathan Kelly to the said James Taylor in hand paid, the receipt whereof is hereby acknowledged, he, the said James Taylor, hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto Nathan Kelly, his heirs and assigns, certain lots in the aforesaid Town of Newport and County of Mason, being described in plan of said town, viz: the inlots numbered 10 and 11, and on Front street, the other two outlots, numbers 15 and 18, containing three

acres each, and adjoining said town, with all improvements and privileges appertaining to the said lots. To have and to hold the lots and premises hereby conveyed, and every part thereof, with the appurtenances, unto the said Nathan Kelly, his heirs and assigns, forever, to his and their own proper use; and the said James Taylor, for himself and his heirs, doth *covent* and grant, to and with the said Nathan Kelly, his heirs and assigns, that he, [50] the said James Taylor and his heirs, the lots and premises hereby conveyed, and every part thereof, unto the said Nathan Kelly, his heirs and assigns, against him, the said James Taylor, his heirs, and all and every person whatever, shall and will warrant and forever defend by these presents. In witness whereof, the said James Taylor hath hereunto set his hand and seal, by his lawful attorney-in-fact, the day and year above written.

JAMES TAYLOR, JR., [SEAL.]
Attorney-in-fact, for
JAMES TAYLOR, SR., [SEAL.]

In presence of
J. BARTLE,
JACOB FOWLER.

At a Court held for Mason, the 20th of January, 1794, this indenture of bargain and sale from James Taylor to Nathan Kelly was acknowledged by James Taylor, Jr., attorney-in-fact for the said James Taylor, Sr., and ordered to be recorded.

Teste, T. MARSHALL, JR., C. M. C.

A copy. Attest,

Clerk's fee, 75 cts. JOHN JAMES KEY, Cl'k M. Cty. Ct.

Also, a deed from Taylor to Fowler.

This indenture, made the 24th January, 1794, between James Taylor, of the State of Virginia and County of Caroline, of the one part, and Jacob Fowler, of the State of Kentucky County of Mason, and Town of Newport, of the other part, witnesseth, that for and in [51] consideration of the sum of five pounds, by the said Jacob Fowler, to the said James Taylor in hand paid, the receipt of which is hereby acknowledged by the said James Taylor, hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto the said Jacob Fowler, his heirs and assigns, a certain lot in the aforesaid Town of Newport and County of Mason, and known in the plan of said town by No. 5 inlot, and on Front or Water streets, with all improvements and privileges appertaining to the said lot. To have and to hold the said lot and premises, hereby conveyed, and every part thereof, with the appurtenances, to the said Jacob Fowler, his heirs and assigns, forever, to his and their own use; and the said James Taylor, for himself and his heirs, doth covenant and grant to and with the said Jacob Fowler, his heirs and assigns, that he, the said James Taylor, his heirs, the lots and

premises hereby conveyed and every part thereof, unto the said Jacob Fowler, his heirs and assigns, against him, the said James Taylor and his heirs, and all and every other person or persons, whatsoever, shall and will warrant and forever defend by these presents. In witness wherof, the said James Taylor hath set his [52] hand and seal, by his lawful attorney-in-fact, the day and year above written.

JAMES TAYLOR, JR., [SEAL.]

In presence of Attorney-in-fact, for

J. BARTLE, JAMES TAYLOR, [SEAL.]

NATHAN KELLY.

At a Court held for Mason County, 28th day of January, 1794, this indenture of bargain and sale, from James Taylor to Jacob Fowler, was acknowledged by James Taylor, Jr., attorney-in-fact, for said James Taylor, Sr., and ordered to be recorded.

Teste, T. MARSHALL, C. M. C.

A copy. Attest,
Fee, 75 cts. JOHN JAMES KEY, Cl'k M. C. C.

Also, a deed from Taylor to Lewis, viz :

This indenture between James Taylor, of the State of Virginia and County of Caroline, of the one part, and Andrew Lewis, of the County of Mason and Town of Newport, of the other part, witnesseth, that for and in consideration of the sum of ten pounds, by the said Andrew Lewis, to the said James Taylor in hand paid, the receipt of which is hereby acknowledged, he, the said James Taylor, hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto the said Andrew Lewis, his heirs and assigns, one outlot, containing three acres, adjoining the said of Newport, and described in plan of said town, by outlot No. 21, with all improvements and privileges appertaining to the said lot.

To have and to hold the said lot and premises hereby conveyed, and every part thereof, with the appurtenances, unto the said Andrew Lewis, his heirs and assigns, forever, to his and their own proper use; and the said James Taylor, for himself and his heirs, doth covenant and grant to and with the said Lewis, his heirs and assigns, that he, the said James Taylor and his heirs, the lot and premises hereby conveyed, and every part thereof, unto the said Andrew Lewis, his heirs and assigns, against him, the said James Taylor, his heirs, and all and every person whatsoever, shall and will warrant, and forever defend by these presents. In witness

whereof the said James Taylor hereunto set his hand and seal, by his lawful attorney-in-fact, the day and year above written.

JAMES TAYLOR, JR., [SEAL.]
Attorney-in-fact, for
JAMES TAYLOR, [SEAL.]

Mason, Set.

[54] Personally appeared before us, the subscribers, two of the Commonwealth's Justices of the Peace, in and for said county, James Taylor, Jr., agent for himself, and attorney-in-fact for James Taylor, and acknowledged the within deed of conveyance to be his act and deed for the purposes therein mentioned. Given under our hands, this 10th day of June, 1794.

GEO. MITCHELL,
J. BARTLE.

At a Court held for Mason county, the 22d July, 1794, this indenture of bargain and sale, from James Taylor to Andrew Lewis, was certified by two magistrates, and ordered to be recorded.

Teste, T. MARSHALL, C. M. C.

A copy. Attest.
Fee, 93¾ cts. JOHN JAMES KEY, Cl'k M. C. C.

Also, a deed from Taylor to Benham.

This indenture, made the 7th day of September, 1795, between James Taylor, of the County of Caroline and State of Virginia, of the one part, and Robert Benham, of the Commonwealth of Kentucky and County of Campbell, of the other part, witnesseth: that [55] for and in consideration of thirty pounds, by the said Robert Benham to the said James Taylor in hand paid, the receipt of which is hereby acknowledged, he, the said James Taylor, had granted, bargained and sold, and doth by these presents grant, bargain and sell unto the said Robert Benham, his heirs and assigns, certain lots in the said Town of Newport aforesaid, and County of Campbell, situate at the conflux of the Ohio and Licking rivers, and known in the plan of said town, viz: Four inlots, numbered 3, 4, and 120 and 119; also, four outlots, numbered 10, 11, 13, and 14, which outlots contains three acres each, with all the improvements and privileges appertaining to said lots. To have and to hold the said lots and premises hereby conveyed, and every part thereof, with the appurtenances, unto the said Robert Benham, his heirs and assigns, forever, to his and their own use; and the said James Taylor, for himself and his heirs, doth covenant and grant to and with the said Robert Benham, his heirs and assigns, that the said

James Taylor, and his heirs, the lots and premises hereby conveyed, and every part thereof, unto the said Robert Benham, his heirs and [56] assigns, against him, the said James Taylor, and his heirs and all and every other person whatsoever, shall and will forever warrant and defend by these presents.

In witness whereof, the said James Taylor hereunto set his hands and seal, by his lawful attorney-in-fact, the day and year above written.

In presence of
JAS. LITTLE,
JOHN BUSH,
THOS. KENNEDY,

JAMES TAYLOR, [SEAL.]
By his attorney-in-fact
JAMES TAYLOR, [SEAL.]

At a Court held for Campbell county, the 7th day of September, 1795, this indenture for the lots in the Town of Newport, from James Taylor, Sen'r to Robert Benham, was acknowledged by James Taylor, attorney-in-fact for James Taylor, Sen'r, and ordered to be recorded.

Teste, JAMES TAYLOR, C. C. C. C.

A copy. Attest,

JAMES H. PARKER, D. C.
For BEN. D. BEALL, Cl'k,
Campbell County Court.

Also, a deed from Taylor to E. Mould, viz:

This indenture, made the 10th day of June, 1794, between James Taylor, of the State of Virginia and County of Caroline, of the one part, and Elizabeth Mould, daughter of Mrs. John Bartle, of the [57] County of Mason and Town of Newport, of the other part, witnesseth: that for and in consideration of the love and esteem which James Taylor, Jr., attorney-in-fact for James Taylor aforesaid, doth leave to the said Elizabeth Mould, and for the further consideration of ten shillings, by the said Elizabeth in hand paid to the said James Taylor, the receipt of which is hereby acknowledged, he, the said James Taylor, hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto Elizabeth Mould, her heirs and assigns, a certain lot in the aforesaid Town of Newport and County of Mason, lying on Second street, and described in plan of said town by inlot number 43, with all improvements and privileges appertaining unto the said lot. To have and to hold the said lot and premises hereby conveyed, and every part thereof, with the appurtenances, unto the said Elizabeth Mould, her heirs and assigns, forever, to her and their own proper use; and the said James Taylor, for himself and his heirs, doth covenant and agree to [58] and with the said Elizabeth Mould, her heirs and assigns, that the said James Taylor, and his heirs, the lot and premises hereby

conveyed, and every part thereof, unto the said Elizabeth Mould, her heirs and assigns, against him, the said James Taylor, his heirs and all and every other person whatsoever, shall and will warrant and forever defend by these presents.

In witness whereof, the said James Taylor hath hereunto set his hand and seal, by his lawful attorney-in-fact, the day and year above written.

JAMES TAYLOR, JR., [SEAL.]
Attorney-in-fact for
JAMES TAYLOR, [SEAL.]

MASON COUNTY, Sct.

Personally appeared before us, the subscribers, two of the Commonwealth's Justices, in and for said county, James Taylor, Jun'r, agent for himself, and attorney-in-fact for James Taylor, and acknowledged the within deed of conveyance to be his act and deed, for the purposes therein mentioned.

Given under our hands, this 10th day of June, 1794.

GEO. MITCHELL,
J. BARTLE.

At a Court held for Mason county, the 22d day of July, 1794, [59] this indenture of bargain and sale, from James Taylor to Elizabeth Mould, was certified by two magistrates, and ordered to be recorded.

Teste, T. MARSHALL, JR., C. M. C.

A copy. Attest,
Fee, 93¾ cts. JOHN JAMES KEY, Cl'k M. C'ty Ct.

Also, a deed from Taylor to Justices of Campbell, viz:

This indenture, made the 1st September, one thousand seven hundred and ninety-five, between James Taylor, Sen'r, of the State of Virginia and County of Caroline, of the one part, and John Roberts, John Cook, Robert Benham, James Little, Thomas Kennedy, Samuel Bryan, and Jno. Bush, gentlemen, justices of the County Court of Campbell County, of the other part, witnesseth: that for and in consideration of the said justices, and the justices of the Court of Quarter Sessions having fixed on Newport, at the confluence of the Ohio and Licking rivers, for the seat of justice for said county, and for the further consideration of one shilling, by the said justices in hand paid to the said James Taylor, Sen'r, the receipt of which is [60] hereby acknowledged, he, the said James Taylor, hath granted, bargained and sold, and doth by these presents grant, bargain and sell unto the said John Roberts, John Cook, Robert Benham, James Little, Thomas Kennedy, Samuel Bryant, and John Bush, gentle-

men, justices as aforesaid, and their successors, a certain parcel of ground in the county of Campbell and Town of Newport aforesaid, containing one acre and one hundred and fifty-two square poles, or six inlots, and known in the plan of said town by "Public Square," Nos. 79, 80, 81, 82, 83, and 84, to be appropriated as the said justices and their successors may think proper, for the use of public buildings. To have and to hold the said lots and premises hereby conveyed, and every part thereof, with the appurtenances, unto the said justices and their successors forever, to the use of the said county of Campbell; and the said James Taylor, Sen'r, for himself and his heirs, doth covenant and grant to and with the said justices and their successors, that he, the said James Taylor, and his heirs, the lots and premises hereby conveyed, and every part thereof, unto the said justices and their successors, against him, the said James [61] Taylor, Sen'r, and his heirs, and all and every other person whatsoever, shall and will warrant and forever defend by these presents.

In witness whereof, the said James Taylor, Sen'r, hath hereunto set his hand and seal, by his lawful attorney-in-fact, the day and year above written.

In presence of } JAMES TAYLOR, Sen'r, [SEAL.].
ROBT. BENHAM, } By his attorney-in-fact,
JAMES TAYLOR.

CAMPBELL; SEPTEMBER COURT, 1795.

This indenture of bargain and sale, from James Taylor, Sen'r, to the justices of this county, was acknowledged by James Taylor, attorney-in-fact for James Taylor, Sen'r, and ordered to be recorded.

Test, JAMES TAYLOR, C. C. C. C.

A copy. Attest, JAMES H. PARKER, D. C.
For BENJ. D. BEALL, Cl'k
Campbell County Court.

Then the Act of 1795, establishing the town, viz: (.)

And, also the Act of 1836, changing the name of Mayor and Trustees, viz:

An act amendatory of the several acts relating to the Town of [62] Newport, in Campbell county, approved February 24th, 1834, and also amendatory thereof, approved February 29th, 1836, viz:

Also the act of 1849 changing the name to the President and Common Council of the City of Newport, which is as follows, viz:

An act for the benefit of the Town of Newport, approved February 21st, 1849, the second secton of which is as follows, (.)

[63] It is agreed that a deed from James Taylor, Sen'r, to his

son, Gen'l James Taylor, covering the Town of Newport, dated in 1799, was introduced and read in evidence in the cause, which is as follows, viz:

This indenture, made the 8th day of June one thousand seven hundred and ninety-nine, between James Taylor, the elder, of the State of Virginia and County of Caroline, and James Taylor, the younger, of the State of Kentucky and County of Campbell: Witnesseth, that the said James Taylor, the elder, in consideration of his love and affection for his said son, of his previous promise so to do, whereby his said son has been induced to erect expensive buildings and make sundry improvements on said tract of land herein presently mentioned, and of five shillings current money of Virginia by the said James Taylor, the younger, to him in hand paid, the receipt, whereof he doth hereby acknowledge, hath given, granted, bargained and sold, and hereby gives, grants, bargains and sells, unto the said James Taylor, the younger, one certain tract or parcel of land, situate, lying and being in the State of Kentucky and County of Campbell, in the *fork of this and hickory run* adjoining the Town of Newport, being a part of fifteen hundred acres heretofore patented [64] to the said James Taylor, the elder, and bounded as follows: Beginning at a sugar tree, hackberry, and two hickories on the bank of Licking river, below the mouth of a branch, being the upper corner of a patent formerly granted to the said James Taylor, the elder, on the said river Licking, running thence along the back line of the said patent north 45, four hundred and forty-six poles, to a white oak, elm, and beech in the said back line across duck creek near a fork thereof, thence N. 40, W. 320 poles, so as to include duck creek, to five beech *pointers* on the bank of the Ohio river, thence down the windings of Ohio river, south 30½, W. 52 poles; S. 33½, W. 89 poles; S. 42½, W. 40 poles, to a large poplar standing also on the bank of the Ohio river, by which river the lands hereby conveyed is bounded in the three last mentioned courses, which poplar is the upper boundary of the Town of Newport, on the Ohio; thence along the several boundaries on the land side of the Town of Newport, as established and ascertained by law, and the recorded plat thereof in the Court of Campbell county, in the State of Kentucky, until the line strikes Licking river, and thence up the said river Licking, according to its several courses and meanders, to the beginning, so as to include all that part of the patent lying below the line of the land hereby conveyed, which was above Duck creek, except so much thereof as has been appropriated in manner afore-[65] said for the Town of Newport, and also all right and title which James Taylor, the elder, now hath or is entitled to, of, in, and to any ferry or ferries from the said Town of Newport, and every part thereof, over and across both the said Ohio and Licking rivers, with all and singular the advantages, privileges, emoluments, and appertenances of the said tract of land, and the said ferry or ferries

hereby given, granted, sold and conveyed, and every part and parcel thereof. To have and to hold the said tract or parcel of land hereby conveyed, and all and singular its appurtenances, be the same more or less, together with all and singular the advantages, privileges and emoluments thereunto belonging, unto him, the said James Taylor, the younger, his heirs and assigns, forever, in fee absolute, and unconditional fee simple, and to his and their own proper use and behoof.

And the said James Taylor, the elder, his heirs, executors and administrators, the said land and premises, with its appurtenances, and the said ferry and ferries, with all and singular the advantages, privileges and appurtanances, and all his the said James Taylor, the elder's, title in and to the said ferry or ferries as now existing, as well as any right he might have (except for this conveyance) hereafter to obtain any ferry or ferries from any part of the Town [66] of Newport, unto the said James Taylor, the younger, his heirs, and assigns, will forever warrant and defend against the right, title, claim, or demand of any person claiming by, from, or under him the said James Taylor, the elder, but not against the right, title, claim, or demand of any other person whatever.

In witness hereunto subscribed his name, and affixed his seal the day and year *first* above written.

JAMES TAYLOR, [SEAL.]

Signed, sealed, and delivered in presence of John Taliaferro, Mark C. Woodford, J. Woodford.

VIRGINIA, Sct.

At a court held for the County of Carolina, in the State aforesaid, at the Court House, on Tuesday, 11th day of June, 1799, the within deed, between James Taylor, the elder, of the one part, and James Taylor, the younger, of the other part, for land in the County of Campbell and State of Kentucky, was acknowledged by James Taylor, the elder, to be his act and deed, and ordered to be certified.

In testimony whereof, I, William Nelson, clerk of the said Court have hereunto set my hand, and affixed the seal of the said county, the 14th day of June, 1799.

[L. S.] WILLIAM NELSON, Cl'k C.

[68] At a court held for Campbell County, on Monday, the 9th day of September, 1799.

This deed of gift from James Taylor, the elder, of the County of Caroline and State of Virginia, to James Taylor, the younger, of the County of Campbell and State of Kentucky, was presented in Court, certified by William Nelson, clerk of the said County of Caroline and State of Virginia, aforesaid, to have been duly acknowledged in open court of the said county, by the said James Taylor,

the elder, and on motion of the said James Taylor, the younger, it was ordered to be recorded, and is recorded.

Teste, EDMUND TAYLOR, D. C. C. C.

A true copy.

Attest, BENJ. D. BEALL, Cl'k.
By BENJ. BEALL, D. C.

James H. McClure states that he has lived in Newport 57 years, and can remember back 50; Gen'l James Taylor and Hubbard Taylor were agents for James Taylor, of Virginia.

The citizens of Newport have always used the public grounds in front of the city as belonging to the town, without any disturbance on the part of any one; that the trustees of the town paved the streets running to the river, and that when those streets were prepared to be paved, the trustees had usually had paved those first to which the citizens most interested might make the most *libeal* dona- [69] tions, and had seen a spirit of rivalry as to which street should be first paved; that in 1830 the population of the then town was from 700 to 1,000, that now the population of City of Newport is above 6,000, and that in his public convenience required another ferry; that he had frequently quarried rock in front of the town, and that other citizens had done the same without any disturbance from any one. Has heard a good deal of complainant for want of ferry accommodations; believes that another ferry would be a great accommodation to the public.

Cross-examined:

Believes that Capt Air, the present ferryman, is the best we ever had; states that another boat at the same place might be sufficient to carry over all that come; but believes that another boat from another point would give much more satisfaction and be more convenient; never knew of any ferry-house on the esplanade, or any possession by Taylor.

Gen'l James Taylor stated that his brother, Hubbard, and himself had been att'ys-in-fact for their father, James Taylor, Sen'r, in [70] reference to all the land owned by him in Kentucky, to sell and do every act in regard thereto for him.

John L. Boyd states that he has lived in Newport about 30 years, and knows that the streets have been paved and made to the Ohio river, in front of the town, by the trustees of the town.

Knows that the people of Newport have had free and uninterrupted use of the ground in front of the town, as much as to the streets in any other part of the town; that the town has from time to time worked and improved the esplanade ever since he could remember; that the trustees of the town had assessed and collected wharfage on the entire esplanade lying upon the Ohio and Licking river, but the trustees finding that the collecting of wharfage had a ten-

dency to drive away boats from the town, thought it better to repeal the ordinance, and did so; that the city has leased out a part of the esplanade lying upon Licking river, without any interruption from any one; York street had been the only ferry landing except in very low water.

[71] Witness states that he had heard a great deal of complaint as to the manner of conducting the ferry until the present movement for a new ferry was started; that public convenience and interest requires another ferry, at a different point or street. States that the growth of the city, in the last few years, had been very rapid, and the country also, had increased very much in population.

Cross-examined:

States that he is one of the Common Council of the City of Newport, and that he has no knowledge of any secret meeting being held by them; has no knowledge of any meeting being kept a secret from any member of the Council; has no knowledge that the City Council ever had an intention to try to keep the application for a ferry secret from Taylor's heirs.

States that the Council held a private meeting at the house of Mr. Root, for the purpose of consulting its attorneys, and agreeing upon their fees. President called T. A. Boyd, who proved that a map or plat of said town, then presented to the Court, was a cor-

[72] rect map; that it was made some four years ago by who was the City Surveyor, as the map purported, and believed that it was under the authority of the trustees of the town; has heard the trustees say so; believes it is considered a correct map. A copy of which is attached hereto, (in answer to a question by the Court.) The lots represented on the map, just presented, are most all of them improved, and persons doing business, or living on them. From the ferry-landing to Taylor's creek, is a considerable distance.

There have been a number of additions to the town, within five or six years back, which are thickly settled and built upon.

The Belleview addition, as it is represented on the map, was all a cornfield five or six years ago; a large part of those persons living in the Belleview addition, are engaged in business on the river; their places of business on the other side, as well as their residences on this side, are all, or nearly so, a considerable distance above the foot of York street, and the place of landing, on the opposite shore, and another ferry, above the one at York, would certainly be an accommodation to them.

[73] In the "Factory addition," there are a number of heavy manufacturing establishments, most of which have to haul down upon the Newport side, to York street, to cross the ferry, and then upon the opposite side of the places of business; that they are connected with the ground back of the city, and up Taylor's creek,

and up the Ohio, is thickly settled with gardeners, &c., whose business requires them to cross the river a great deal. Witness here proved the map of the "Buena Vista" addition of the town, made in the fall of 1848, and that a large number of houses had been built in that addition, (which is here attached.) [Map E.] Also, that James Taylor had laid off lots on the other side of Monmouth street, above Ringgold, which he had sold, and were built upon, but were not incorporated in the City of Newport.

Cross-examined:

Thinks most of the manufacturing establishments on the other side of the river are above the ferry-landing. Thinks a ferry from the foot of East Row street would be a great public convenience. Thinks there should be two or three ferries, to meet the [74] demands of the town. Jamestown is about one and a half miles above Newport, and Brooklyn is nearly adjoining Jamestown, on the lower side. There was a ferry established, by an act of the Legislature, at Brooklyn, in 1848, but he obtained a repeal of the act last winter. Believes there are ferries at Jamestown and Brooklyn, both, but they only use skiffs.

William B. Ross recalled by President, &c:

States that a large number of persons labor in foundries, factories, &c., on the Ohio side, who live here, and above the ferry-landing, at York street. Thinks that more people cross from above, than below the landing. There is a large population above Newport, and Taylor's creek, who come to this ferry to cross. Have known a number of persons who have declined coming over to Newport, from Cincinnati, to live, on account of want of ferry accommodations, and has known several men to leave Newport for the same reason. He has had opportunities to rent out houses himself, but for that.

Cross-examined:

Has heard a great deal of complaint about the want of ferry accommodations. Brooklyn and Jamestown are above Newport. Don't know whether there is a ferry at Brooklyn or not. I was not a member of the City Council when the application for a ferry was made, but knew that the city was going to apply, and every citizen might have known it, for I did not know it as a secret. Lower market, in Cincinnati, is below the ferry-landing; the other markets, and most of the business-houses, are below, and persons crossing to go to them, would go down the river below, but the canal, the railroad depot, most all of the foundries, steam engine shops, ship yards, planing machines, &c., are above the landing; and think two ferries would be of good public advantage, one from the upper part of Newport, and one from the lower. Don't know what it costs to run a ferry-boat, but has understood that the ferry

yields a great profit, and believes that two ferries would be well supported. In 1833 there was a flat-boat for ferrying, but a steam ferry-boat was afterwards put on.

[76] H. H. Mayo was introduced by President, &c:

He lived in Newport many years, and remembers thirty-five years back. Knows that the esplanade has been claimed by the town all that time, and used for landing boats, rafts, &c., hauling over, &c., and has been open to everybody. The population of Newport, in 1830 about 1,000, or 1,200, at that time. Belleview addition was all a cornfield, and most of the upper part of the city was an orchard and cornfield.

Has been a great increase in the population of Newport within four or five years past; also, in the vicinity of Newport, farms have been cut up into small tracts for gardens, and the like. Crossing at the ferry has increased immense; makes it almost a constant throng.

The town, assisted by subscription, has made considerable improvements on the esplanade, by paving the streets down to the water, and by driving piles to protect the bank between the streets.

There is a bridge about to be built across Taylor's creek, at the end of Main street, to facilitate travel. A large number of citizens work over the river in ship-yards, factories, &c.

Has no doubt that the public convenience would be better sub-
[77] served, if there was other ferries, and believes that another ferry would yield a good profit for both.

States that the distance from York street landing to the upper limits of the city, is about 2,600 feet.

Cross-examined:

Doxon was the lessee of the ferry, until the present lessee (Captain Robert Air) got it. Don't know that Doxon lost money, but knows that he was anxious to get it again. Don't know whether another boat, at the same place, would accommodate the public. Has heard a great deal of complaint for want of ferry accommodations.

In Reply to the Court.

The inconvenience is in the distance the people have to travel out of the way to get to the York street ferry, and not so much for want of accommodation, after getting there. Sometimes persons have to wait for want of room on the ferry-boats; thinks that Newport can get a landing on the other side of the river, of Mrs. Myers; has so understood; Myers' landing is below the present ferry-landing, and about opposite the foot of Cabbott street. Believes ferry
[78] from Cabbott street would be a great accommodation. Believes

Captain Air had another boat built some time ago, but has used it mostly as a ferry-boat, except when the other was being repaired, or something of that sort.

Direct resumed:

The boat spoke of is a great deal *to* large and clumsy for a ferry-boat. Thinks another boat is from another place, and in the hands of another man, would much more accommodate the public. Thinks a ferry from Cabbot street would greatly benefit the citizens.

George W. Soward called by President, &c:

States that he has lived in Newport upwards of six years; since that time, the increase in the number of buildings has been something like $\frac{2}{3}$ or more; between Isabella street and Licking river there was but four old houses when he came here; now all that part of the town is built up on McArthur and Todd streets, and all that part of the city above Mayo street; there were no houses when he came here; now thickly built up.

There were about four hundred buildings erected year before last, and last year about three hundred houses, generally tenanted, over town.

[79] Has heard a great deal of complaint about want of ferry accommodations; there is a general complaint over town.

In Reply to the Court.

A ferry from the lower part of the town would be of great advantage to the public.

Cross-examined:

A ferry from the foot of Cabbot street would land at Capt. Myers' wharf, on the other side, on the square below Ludlow street; Capt. Myers offered to lease to Newport, for ferry landing on the Cincinnati side. The foot of Cabbott street is not paved, but has piles driven across to preserve the bank; was a member of the City Council when the application for a ferry was made, February last; knows nothing of any secret meeting of the Council, to conceal from Taylor's heirs; knows that there was an adjourned meeting, for the purpose of going into contract with attorneys, and that the order was made at the house of Mr. Root on the next night; and the reason of meeting at that place, was because the regular meetings were held in the Seminary, where they generally had fire during the day, except on Saturdays; the adjourned meeting was on [80] Saturday night; when there had been no fire there during the day, the only object of meeting at Mr. Root's was to go into contract with attorneys, and to consult with them some little time about the matter; did not consider it a secret, nor did they tell every body over town. A public meeting of the citizens on the subject, was held sometime before that, at which they passed reso-

lutions instructing the City Council to make application for a ferry, or requesting them to resign. Was up at the County Court when the application was made; is part owner in a steam saw-mill and boat yard on Licking river.

Direct resumed:

Is acquainted with machinery for boats; has just made a calculation of the cost of boat, and running the same, per day, which is just $15 per day.

Cross-examined:

Took the time of Capt. Air into account, also, engineer, pilot, and others, making in all six men; also, the coal, original cost of boat, and wear and tear, and has allowed for the boat to last fourteen years, and pay for itself in that time.

Did not count the interest on the cost of the boat, but allowed for Capt. Air's time, who is the owner of the boat. No damages of [81] ferry-boat blowing up; no risk. Did not add in insurance in his calculation.

Has understood that Capt. Air, the lessee, paid $1,100 per year rent for the ferry on this side, and carried all the Taylor's family free of charge. Did not take the rent of the landing on the other side into account, but did take this side. Don't believe that the people of Newport would be satisfied now, if other boats were run by Taylor's heirs, for they consider that the esplanade belongs to the town, and that they are entitled to the ferry privileges themselves.

It was proved that the ferry has been run by Taylor's heirs for some 40 years or more.

Theodore Chamberlin stated that he had lived in Newport upwards of three years. That great improvements have taken place since he has lived there. Has heard the statements of the other witnesses, and concurs with them, mainly. Has known a number of persons who would not move over to Newport, owing to the want of ferry [82] accommodations; and has known others who have moved to Cincinnati (persons who were doing business there) for the same reason. Believes ferries from two or three places to be necessary to accommodate the public, and that business would be much better subserved by having other ferries.

Cross-examined:

Believes another boat, at least, from another point, necessary for public convenience; thinks the foot of East Row street, also of Cabbott street, proper places for ferries; foot of Monmouth street would do very well; owns property on corner of Monmouth street.

Direct resumed:

York street has been the ferry landing since he has known Newport; on one or two occasions the ferry-boat has been driven to land, by very low water, out on a sand bar nearly or quite half across the river; the bar puts out and above East Row street, and is bare in low water.

Cross-examined:

Thinks the bar is as much as half way across the river, and rather above East Row street.

Daniel Wolff states that he has carried on a large rolling mill in Newport for four years; has lived in Newport three years; does a large business, and feels want of other ferries; believes public convenience requires another ferry.

His mill is between East Row street and Taylor's creek, and most of his customers are large iron manufacturing establishments on the other side of the river, above the ferry landing,

Has to haul down on this side of the ferry landing, and up on other side; his ferriages comes more than $500 per year. Other factories up near his mill, that have great deal of hauling across the river. If there was sufficient ferry accommodations, other factories would be moved over from the other side of the river.

Believes it would be better for him to rent ground for his mill on the other side of the river, at $1,000 per year, on account of inconvenience of ferry. Takes now up to the railroad depot on the other side, and to other side.

Morris Shiply states that he has been acquainted with the Town of Newport from five to six years back; when he first knew it, there was from two to three thousand inhabitants, but now over six thou-
[84] sand; considers that the public convenience would be greatly enhanced by having a ferry at the foot of Cabbot street; and especially the western part of the city would be much benefitted and accommodated by it; foot of East Row street would suit the eastern part of the city best; ferry at York street very unpleasant to cross, especially for ladies, and particularly in the fall of the year, when stock is being crossed, &c. Has seen a great deal of delay; has been delayed himself one-half an hour at a time.

Cross-examined:

Has seen much delay at different times; don't think another boat at same place would give satisfaction. Ferry yields great profit; has understood that the gross receipts for year are $20,000; thinks it is fully that much.

Samuel Perry, called by President, &c.:

States that he came to Newport in 1811, and has resided there ever since. Has known the citizens of the town to quarry rock on

the esplanade; often people from Cincinnati used to come over to quarry stone, and the citizens of Newport would drive them off. Recollects that General James Taylor called on him, and asked him why he did not go with the other citizens and drive the persons from the other side off, saying, at the same time, that the esplanade belonged to the town, and that they ought to protect it from the aggressions of Cincinnatians. Has frequently heard him say that the town owned the esplanade.

James Doxon, called by President, &c.:

States that he was acquainted with the ferry for a considerable time before, and up to 1844; his father was the lessee of General James Taylor; they run a steam ferry-boat at that time; York street was the ferry landing; has made an estimate of the cost of running the boat, which allows for the Collector $50 per month.

The Engineer, $40.
The Pilot, 30.
The Deck hand, 30.

40 bushels coal per day, at 1,200 bushels per month, $120 per month. Platforms, say $300 per year, or $25 per month. The original cost of a good boat is from five to six thousand dollars, and a boat will last seven years. Has estimated this original cost at $75 per month, which in seven years would more than pay for the [86] boat, as at that estimate it makes the gross sum of $6,500; contingent expenses for cables, oil, &c., $30 per month.

Thinks the engine will sell for enough at the end of that time, seven years, to pay for the repair of the boat during the time; in all about $14 per day. Was told by the engineer of Capt. Air's boat, that they burned about 40 bushels of coal per day; thinks it would cost no more to run a boat now than when his father was the lessee, except one additional deck hand now, perhaps. Thinks a boat could be got fully as cheap now as when his father had the ferry.

Cross-examined:

Put the collector's wages down to $50 per month; thinks a good hand could be got for that; didn't count in the license on the other side of the river in his calculation; when his father had the ferry, they rented the landing on the other side, and the license included, for $300. We did not lose money the last year we run the ferry, 1844; cleared $1,000; books were not very well kept, and could not tell exactly, but is quite certain cleared that much; was a hand on the boat for his father, himself; is accurate as to expenses of the [87] ferry. None of the manufacturing establishments were in operation in the year 1844, in Newport; if boat runs at night, would require two engineers; has run for a considerable time back, at night, but has stopped again; don't know whether running at night is a losing business.

John T. Levis called by President, &c., states that he is acquainted with machinery; is now engaged in a large factory in Covington; can get a good engineer now for $40 per month; captain or collector for $40 per month; pilot for $30; two deck hands for $40 per month, $20 each.

Think a boat will not burn ordinarily over 40 bushels of coal, which, at 10 cents per bushel, would make $120 per month for coal; thinks that expenses for cables, oils, repairs, &c., would amount to $100 per month; a boat will last six or seven years; thinks that a good boat can be got for $6,000 or $6,500; makes the original cost of a boat, when reduced to months, for the time it will run, from $80 to $90 per month; cost of a boat depends somewhat on its finish, &c.; was once engaged in running a boat from Covington to Cincinnati; the cost of that, including platforms and all things for [88] an outfit complete, was $7,000.

The engine of a boat when new costs about $2,800, and was worth about ¼ of its value, original cost, at the end of 6 or 7 years, when the boat would be worn out; generally expected that one engine will wear out two boats; believes that about $15 or $16 per day will pay for a boat, and pay all expenses of running the same.

Cross-examined:

Run a boat from Covington for some time himself; does not think that the collector would take "the stealings of the drawer" any sooner at $40 per month wages than $60; thinks if he was dishonest he would take it anyhow.

Lost money when he run a boat; there was opposition at that time, and charges put down; could have made money at present rates.

The case was thereupon submitted, who delivered the following opinion:

(See page of this record.)

This being all the testimony introduced by the defendants in error, the plaintiffs in error moved the Court to reverse the opinion of the County Court upon the evidence they offered by defendants.

[89] To which the defendants in error except, and pray that this, their bill of exceptions may be signed, sealed, and made a part of the record.

JAMES PRYOR, Judge. [SEAL.]

Upon the calling of the cause the attorneys for Taylor's heirs presented and read an assignment of errors to the judgment of the County Court. Whereupon the attorneys of the city claimed that the burden of proof was on the city: this was conceded by the attorneys for Taylor's heirs, and the Court gave no opinion on the question.

JAMES PRYOR, Judge. [SEAL.]

the surveyor [illegible] of
the vacant lots. That act was apparently imperative
in its terms requiring the claimant to make his
proofs within a given time. If the neglect and non compliance
of the claimant could not complain but little, if not

And on the 21st September, 1850, the following order was entered:

This day came defendants and filed their bill of exceptions herein, which were signed, sealed, and enrolled, and made part of the evidence, and prayed an appeal to the Court of Appeals, which is granted upon their executing bond in the penalty of $500 within 30 days, with F. A. Miller and Jno. Fi. Boyd, or either of them, as security conditioned, according to law.

And on the 7th day of October, the following appeal bond was given:

Appeal Bond.

Know all men by these presents, that we, the President and Common Council of the City of Newport, and F. A. Miller and J. F. Boyd are held and firmly bound unto James Taylor, Geo. W. Tibbatts, and Anna W. his wife, George T. Williamson, and Jane M. his wife, Horatio T. Harris, and Keturah L. his wife, in the just and full sum of $500, lawful money, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed and dated this 7th day of October, 1850.

The condition of the above obligation is such, that whereas, the above bound the President and Common Council of the City of [92] Newport, hath prayed and obtained an appeal to the Court of Appeals from the decision of the Judge of the Kenton Circuit Court, rendered herein on the 10th day of Sept., 1850. Now, if the above bound the President and Common Council of the City of Newport and their sureties, shall duly prosecute the said appeal, and with effect, or shall well and truly satisfy and pay all costs and damages which may be awarded to or sustained by them, in case the said decision is affirmed in whole or in part, or the said appeal dismissed or discontinued, then the above obligation to be void, else to remain in full force and virtue.

F. A. MILLER, [SEAL.]
J. F. BOYD. [SEAL.]

Attest,
W. N. PATTERSON, D. C.

STATE OF KENTUCKY,
Kenton Circuit Court, to wit:

I, Edward B. Bartlett, Clerk of said Court, do certify the preceding 106 pages, including this one, contains a full and complete transcript of the record and proceedings in the case therein mentioned.

EDWARD B. BARTLETT, Clerk,
By W. N. PATTERSON, D. C.

The judgment of the Court below was affirmed by the Court of Appeals, 11 March, 1851.

[93] See case reported 11th B. Mon., page 361.

The foregoing is a copy of the record.

Given under my hand, this 17th Dec., 1853.

Attest,

J. SWIGERT, C. C. A.

STATE OF KENTUCKY, (11 B. Mon. Repts., page 361.)

Court of Appeals, March 11th, 1850.

CITY OF NEWPORT, Appellant, against JAS. TAYLOR'S HEIRS, Appellees.	Upon an appeal from a judgment of the Kenton Circuit Court.

The Court being sufficiently advised, delivered the following opinion, to wit:

Many years since a tract of land at the junction of the Ohio and Licking rivers was laid off into streets and lots, and a plan or map of the town, which was called Newport, was made in 1792. Between this date and 1795 several lots were sold and conveyed to others by the proprietor, Taylor. In December, 1795, an act of the Legislature of this State was passed, establishing the Town of Newport, agreeably to a plat made by John Roberts, Deputy Surveyor of said county, on a resurvey of said town, the 20th of August, 1795, and lodged in the office of Campbell county, to be recorded.

Upon each map there is an open space between the lots and the [94] rivers; whether the purchasers of lots previous to the act aforesaid, had any assurance that this open space was to be considered a part of the town, there is no proof, except that which may be inferred from the fact that the town was thus laid off immediately in front of a navigable river. It seems from the record before us, that for many years past, perhaps even before the town was there, Taylor had a ferry from the site of Newport to Cincinnati, and that he, and his representatives since his death, have uninterruptedly continued in the use and enjoyment of the ferry privilege ever since that time.

At their February Term 1850, the County Court of Campbell granted to the President and Common Council of the City Newport a ferry across the Ohio to Cincinnati.

The heirs of Taylor, dec'd, appealed to the Circuit Court, and on the trial of the appeal the order of the County Court was reversed. From that judgment the City of Newport have by appeal brought the case to this Court for revision.

The decision of the controversy between these parties turn mainly, if not exclusively, upon the question whether the act of the Legisla-

ture establishing the Town of Newport, so vested the title to the ground in front of Newport on the river, in the town or trustees, as to give them a right to have ferries established, or whether by that act this franchise was retained by the proprietor, and has descended to his heirs, as already suggested, there is no proof of anything that took place between the proprietor and the few persons to whom, previous to the passage of the act he had sold and conveyed certain in and outlots. But if it may be presumed that the purchasers or grantees in the seven deeds exhibited, bought under the assurance that the open space was a part of the town, there is not a particle of evidence that they have even controverted the claim of Taylor or his heirs. Almost the entire population of Newport have become citizens and residents of the town since its establishment by the Legislature, and as they seem ever since to have recognized the act as valid, it must be presumed that they have sanctioned and acted under its several provisions, and under the several acts since passed amendatory of it.

[96] It further appears from the records of this Court, that about the year 1830, the trustees of Newport made application for a ferry across the Ohio river to Cincinnati. Their application was refused by the County Court, and they appealed to this Court. At the June Term, 1831, (see 6 J. J. M. 134,) this Court rendered an opinion affirming the opinion of the County Court. It is not necessary to advert to that opinion further than to say, that the parties having waived the enquiry whether the public interest required the establishment of another ferry, the controversy turned exclusively upon the question of right to ferry privileges under the act establishing the town. This Court then decided that the proprietor had not disposed of the fee in the land between the lots and the rivers, but had only disposed of the right of common therein, aad had retained to himself all rights not inconsistent with the right of common, which had been granted, and that the act, instead of divesting Taylor of ferry privileges, did, in fact, secure them to him.

From the evidence contained in the record before us, it seems [97] clear that the public convenience requires the establishment of another ferry across the Ohio river. At the establishment of the town in 1795, it contained but very few inhabitants. In 1830 its population was but a few hundred, but since that time it has grown so rapidly that it is proved now to have more than six thousand inhabitants, and that it is necessary for the public convenience that another ferry should be established. Although this be the state of case, yet we believe we are bound by the opinion of this Court rendered in another controversy between the Town of Newport and Taylor, in 1831. The parties to the controversy are the successors and representatives of the parties in that suit, and if that decision would have precluded the *Town* of Newport, it need hardly be said that it equally bars the City of Newport.

Ordinarily, the failure of one application for a ferry will not forbid

another application by the same party; at one time there may be no necessity for a ferry, and at a subsequent period the public good may imperiously require it.

At one time the applicant may have no such interest in the land as to entitle him to such a privilege, but he may subsequently acquire such an interest. In these and all such cases, the order or judgment in one case will not prevent another application. But this case is presented in a different aspect. Here the City of Newport has precisely the same rights and interests which the Town of Newport had in 1830. No new or additional rights or interests have since accrued to the city. If the Act of 1795 vested in Taylor the exclusive right to ferry privileges, nothing has since accrued, so far as appears from the record before us, to take it from him or his heirs. In the case of Morgan's heirs against Parker, (1 Dana, 144,) it is said that the Court having by two decisions settled the identity of an object called for in an entry, will, in subsequent cases upon the same evidence, adhere to the former decisions. This was said in a controversy not between the same parties. If that be a sound principle as to the mere identity of an object, certainly it is much more conclusively applicable in a case involving the legal construction of a statute.

We will not, however, extend these remarks. We are of opinion that we are not authorized to depart from the decision of 1831, in [99] its exposition of that statute, even if we dissented from it, and, adhering to that opinion, it follows that the Circuit Court did not err in its judgment.

The remedy for any inconvenience under which the city or public may labor, if any remedy they have, is to be had by legislative enactment, and not by judicial decision, or if the present ferry does not afford reasonable accommodation and convenience to the public, perhaps the County Court, who have authority to direct what boat or boats, and number of hands shall be kept at a ferry, may make the necessary orders on the subject.

Not perceiving any error in the judgment of the Circuit Court, it is considered that it be *affirmed*,

Which is ordered to be certified to said Court.

STATE OF KENTUCKY, Sct.

As clerk of the Court of Appeals, I certify that the foregoing pages contain a complete copy of the record and proceedings in the [100] case therein mentioned, two plats accompanying this record as part. Witness my hand this 18th January, 1854.

J. SWIGERT, C. C. A.

Fees, $24.

STATE OF KENTUCKY, Campbell Circuit. } Sct.

I, Benjamin Beall, clerk of the aforesaid Court, do certify that the preceding 99 pages contain a true copy of exhibit R, (all except

the several acts of the Legislature) to plaintiffs' petition in a suit in equity, wherein James Taylor, &c., are pl'ffs, and Daniel Wolff and others are defendants, decided in Campbell Circuit Court at its June Term, 1854.

Given under my hand this 30th day of Dec., 1854.

BENJ. BEALL, Cl'k.
By GUS. ARTSMAN, D. C.

And at a Court of Appeals, continued and held on the 8th day of February, 1856, the Court being sufficiently advised, delivered the following opinion, to wit:

In 1785, a patent was granted by the Commonwealth of Virginia, to James Taylor, for 1,500 acres of land, at the junction of the Licking and Ohio rivers, lying on both rivers, and above the mouth of Licking. In 1791 and 1792, Hubbard Taylor, son of the patentee, laid off a portion of said land, at the confluence of the rivers, into streets and alleys, as a town, to which he gave the name of Newport, and made a plat or plan thereof, representing it as situated on the banks of the said rivers, at their junction, and representing, between the Ohio river and the lots fronting on it, a street, and between it and the river an open space, extending to the river, without any line or letter upon it. This space included a narrow and irregular strip of land on the top of the bank, and extended to the water's edge. Whether the line dividing the front street from this open space was unbroken, or had breaks or openings opposite to the cross-streets coming into it, is not entirely certain, nor is it deemed very material. Besides this representation of the town, the original plat or map had upon it a writing executed by the attorney of the patentee, stating the conditions upon which the lots were to be sold or donated. But these related principally to the terms of payment, and the improvement of the lots by purchasers, and intimated no reservation to the proprietor of any right not indicated by the plat and the fact of his ownership. It appears that some lots were sold and conveyed, by reference to this plat, before August, 1795, when a re-survey was made by John Roberts, under the direction of James Taylor, a son, and then the attorney-in-fact of the patentee, and a new plat was made. By this re-survey and plat, the town was extended up the Ohio river somewhat beyond its original limits. Upon the space between the additional lots and the river, were written the words, "a common," and on that between the original lots and the river, were written the words, "The esplanade to remain a common forever." The conditions indorsed on the original plat were transferred to this new one; but the forfeiture for non-improvement within three years, which was one of the original conditions, was relinquished. Whether there had been any improvements, or were any actual residents within the town, or how

[2] many when this re-survey was made, does not certainly appear. It seems, however, that in January, 1794, the County Court of Mason County, in which Newport was then included, had, on motion of James Taylor, (the patentee,) established a ferry from his lands on the Ohio river, over the same, in front of the Town of Newport, to have and receive the same fare as is allowed from the opposite shore; and in the same year the same Court had, on motion of —— Bartle, to whom a lot fronting towards the river had been conveyed, granted to him a ferry across the Ohio from Newport. But, in 1795, this Court, upon the appeal of James Taylor, reversed the order making that grant, because it did not appear that Bartle had any land on the Ohio river, and the ownership of land on that river has been made by statute necessary to the grant of a ferry across it from this side.

In September, 1795, there seems to have been a public sale of lots in Newport, made, of course, by the new plat. But how many lots were sold does not appear. And, in December, 1795, an act was passed to establish the Town of Newport, then included in the County of Campbell. This act vested the "land comprehended in said town, agreeably to a plat made by John Roberts," with certain exceptions, in certain named trustees; and besides other provisions for keeping up the town, provided in the seventh section "that such part of the said town as lies between the lots and the rivers Ohio and Licking, as will appear by reference to said plat, shall for ever remain for the use and benefit of said town, for a common: reserving to the said James Taylor, his heirs and assigns, every advantage and privilege which he has not disposed of, or which he would by law be entitled to."

Up to the passage of this act, the legal title to all the land "comprehended in said town," except the few lots which had been effectually conveyed to purchasers, had remained in the original proprietor. In 1799, James Taylor, the patentee, conveyed to James Taylor, his son, a large portion of the land covered by his patent, the boundary of which, as described in the deed, began at the upper corner of the patent, on Licking river, and ran with the back line to certain objects called for, thence to the Ohio river, so as to include Duck creek, and to a corner described, and down the Ohio to a large poplar, mentioned as being the upper boundary of the Town of Newport, on the Ohio; "and thence along the several boundaries on the land side of said Town of Newport, as ascertained and established by law, and the recorded plat, &c., until the line strikes Licking river;" thence up the same to the beginning, so as to include all of the patent below the upper line of the land conveyed, "except so much as has been appropriated, in manner aforesaid, for the Town of Newport, and also all right and title which said James Taylor, the elder, now hath, or is entitled to, or may hereafter have or be entitled to, of, in, or to any ferry or ferries,

from said Town of Newport, and every part thereof, over and across both said Ohio and Licking rivers," with all and singular the advantages, privileges, emoluments, &c., of said land, and the ferry or ferries, hereby granted, &c., and every part thereof. If the strip between the lots and the river was a part of the Town of Newport, as established, &c., and the title remained in James Taylor, of Virginia, it would seem not to have passed by this deed, unless under the transfer of the present and future ferries, which may have been supposed to pass such title as the grantor had, and as was necessary to sustain the ferry or ferries referred to.

In 1806, an act was passed, by which, after reciting that the County Courts of counties on the Ohio river had, under a previous act, granted ferries across said river, that their authority in such cases had beendoubted, and that it was reasonable that the ferries so granted should be confirmed, it was enacted that ferries which had been granted in pursuance of the requisitions of said act, be confirmed, provided that the grantee shall enter into bond, &c. A general authority was also conferred upon the Courts of counties lying on the Ohio, to grant ferries across said river, under a restriction as to the distance between them, and a penalty was denounced against transporting persons, &c., across the river to the opposite shore, without authority, &c. And, in June, 1807, an order was made by the Campbell Court, which, after reciting the previous grant by the Mason County Court, to James Taylor, of Virginia, of ferries across the Ohio and Licking rivers, also the provisions of the Act of 1806, respecting ferries which had been granted across the Ohio, and that it satisfactorily appeared that James Taylor, of Virginia, had, by deed, &c., conveyed to James Taylor, of this (Campbell) county, a fee simple estate in said ferries then established, or to be established, in the Town of Newport, thereupon grants or establishes a ferry to "said James Taylor, of Campbell county, in front of the Town of Newport, across the Ohio to the opposite shore, under the law aforesaid, and to be allowed the same rates," &c., &c. And the grantee thereupon entered into the bond required by said act, as owner of the land.

In virtue of these grants, the ferry across the Ohio was carried on under the authority, first of James Taylor, of Virginia, and then of James Taylor, of Campbell county, Kentucky, perhaps from the date of the original grant until the death of the last-mentioned James Taylor, in 1848. It had for many years been managed and carried on by his lessees, of whom one was in possession under an unexpired lease, at his death. After which, his will being for some time in dispute, a ferry-bond was executed by his heirs, and upon the establishment of his will, which authorized his executor to lease the ferry, a bond was executed by the executor, and also by the lessee, Robert Air, under the requisition of the Act of 1852. For many years open ferry-boats and skiffs were alone used at this ferry,

as at all others in the State. In the progress of time, and business, and improvement, a horse-boat was used, and then a steam-boat, and for some years past two steamboats have been used for the transportation of persons and property by this ferry. For many years the ferry-boats and skiffs landed and received, or put off their passengers at different parts of the shore, in front of Newport, according to convenience or necessity. But, for many years past, the landing has been generally, and almost exclusively, at the foot of York street, except that when the water has been extremely low, the boats have landed on a bar in the bed of the river, opposite to, but at some distance from, the foot of East Row (street.)

In 1830, the trustees of Newport applied to the County Court of Campbell county for the grant of another ferry from Newport across the Ohio, and, upon the refusal of their application, they brought the case to this Court, by which the judgment of the County Court was affirmed. For the reasons of this affirmance, founded mainly upon the construction of the Act of 1795, establishing the town, and of the plat therein mentioned, reference is made to the opinion of this Court, as reported in 6 J. J. Marshall, 134. When this application for a ferry was rejected, the population of Newport was probably not over 1,000 souls. Afterwards, in 1850, the population having increased to some 6,000 to 8,000, and the Town of Newport having been previously incorporated as a city, an application was again made by the city for the grant of a ferry, which was then granted by the County Court. But the order making the grant was reversed by this Court on the single ground, that in a proceeding between substantially the same parties, about precisely the same thing, and involving the same questions of construction, without any variation of facts by which that question could be affected, the Court felt itself bound by the former adjudication, and especially by the construction which had thereby been given to the Act of 1795, establishing the Town of Newport. The opinion delivered in this last case is reported, 11 B. Monroe, 361.

In 1853, the steamboat Commodore, of near 200 tons, after having been duly inspected, enrolled, and licensed for the coasting trade, by the proper officers of the United States for the collection district of Cincinnati, and those interested in her having obtained, for a nominal consideration, a lease from the City of Newport of the wharf at the foot of Monmouth street, in said city, commenced carrying passengers and property regularly and for profit, to and fro across the Ohio river, in front of the City of Newport, the right to do so being claimed under color of the said license, and of the laws of the United States, by which the licensing of steamboats is regulated and authorized. In January, 1854, James Taylor, the son and executor of James Taylor, who died in 1848, together with Robert Air, the lessee of Taylor's ferry, obtained, upon a bill filed by them, an injunction against this proceeding on the part of the

owners and managers of the Commodore, and also of the City of Newport, which they charged to be a violation of the exclusive ferry-right, so long held under the laws of Kentucky, in virtue of the grants which have been stated, and which have been sanctioned and protected by the repeated decisions of this Court.

The bill claims, in substance, that in making the Town of Newport, James Taylor, of Virginia, retained not only the legal title to the strip of land between Front street and the river, but also all rights therein which were not incompatible with the right of common, by the citizens of the town; that the same title and rights were reserved to him by the Act of 1795, establishing the town, as construed by this Court in the two cases which have been referred to, and that the same were conveyed, by his deed of 1799, to James Taylor, of Kentucky, who held and claimed them until his death, since which they belong to those who are entitled to his estate; and it is claimed not only that the ferry-right across the Ohio river, in front of Newport, which has been used and enjoyed since 1794, belongs exclusively to the devisees of said Taylor, as appurtenant to the legal ownership of the land on and adjacent to the river, but, also, that the right of wharfage was, and is, also, appurtenant to the same estate. And upon the allegation that the City of Newport has collected and received wharfage from boats landing upon or at the shore in front of Newport, alleged to be the property of said estate, and to have been for more than fifty years in the use and possession of James Taylor, of Virginia, and those deriving title from him, it is asked that the city may account for and pay to said executor the wharfage so received; also, that the lease from the city, to the owners of the Commodore, be annulled, and that said owners be compelled to account for and pay the ferriages received by or for them, and that they and all others be restrained from using part of the shore in front of Newport, for receiving or disembarking persons or property, ferried across the river in either direction, and that the exclusive possession and title of the ferry, and the ferry-right, in front of Newport, as held and claimed under the grants to the Taylor's, be quieted.

These are, in substance, the claims and prayers made in the bill, which states, with great minuteness and at great length, the acts and facts supposed to constitute a valid foundation of the rights asserted. The City of Newport, and the owners and managers of the Commodore, made defendants, deny the rights and resist the relief claimed by the plaintiffs. The city, answering at great length, contests most of the facts and legal inferences relied on in the bill, and going back to the origin of the town, claims that by the location and plat of the town, showing its position, with respect to the river Ohio, and exhibiting an open space between the lots on the Front street and the river, and by the sale and conveyance of lots, with reference to that plat, there was a dedication of that

space to the public uses of the town, and to all the uses appropriate to such a space intervening between a navigable river and a town situated on its banks, and that this dedication, at first to be implied from the location of the town, and the exhibition upon the plat of a narrow, open space, between it and the river, without any mark or word indicating an intention of appropriating it, or any part of it, to private use, was afterwards expressly made by words, "a common," and "the esplanade to remain a common forever" written on the different parts of this open space, in the plat made by John Roberts, in August, 1795, under which sales were made in September of the same year.

The city, therefore claims that, although the title to said slip remained in James Taylor, of Virginia, the beneficial interest and use for all purposes to which, in its relative position to the town and the river it was as public ground appropriated, were, by the sale and purchase of lots; in making which, they deny that there was any reservation which could affect the purchasers irrevocably vested in those, who, from time to time, purchased lots, or became inhabitants, and in the local and general public. She maintains that the Legislature could not take away these rights from the town and its citizens; that the Act of December, 1795, was not intended and should not be construed to have this effect; and that if it did not vest in the trustees therein named the legal title to the slip between the lots and the river, neither did it, by the reservation expressed in the seventh section, enlarge or add to the existing rights of James Taylor, nor diminish or detract from those of the town and its citizens; that in the two cases in which this Court decided against the application, and the right of the Town and City of Newport, the only question really presented for decision, and really decided by the Court, was, whether the applicant had such title or interest in the esplanade, as entitled her, under the laws of this State, to be the grantee of a ferry across the Ohio. And that her beneficial and equitable rights, not having been involved in the contest for the grant of a ferry, were not the subject of decision in those, and cannot be precluded by anything which the Court may have said in relation to them.

Upon these grounds, she claims that in whomsoever the legal title to the esplanade, and the legal right to the ferry, may have been, the equitable and beneficial interest, not only in the esplanade, but in the ferry-right, which was incident to it, belonged to the Town, and afterwards to the City of Newport. She, therefore, asks for an account of the profits, as having been received in trust and for the benefit of Newport; and also for a conveyance of the esplanade, &c., upon the same grounds, and upon the additional allegations and facts, that from a very short period after the organization of the town, under the Act of 1795, it has claimed

and exercised undisputed jurisdiction over the esplanade, by extending, and, at the cost of thousands of dollars, improving the streets through it down to the river; by protecting the bank from being washed away, along a great part of the space in front of the town; by building, and using for some years, a market-house upon it; by the charge and collection of wharfage at different periods, and, at present, upon boats landing at the town; by the general and common use by the citizens and others of the entire front on the river, without let or disturbance, and at their pleasure, for landing boats, for loading and unloading them, for piling and hauling away rock and lumber, and other things, they claim that the entire esplanade, except so far as it has been used under the ferry-right of Taylor, which use has, for many years, been almost exclusively confined to the landing at the foot of York street, has been in the exclusive possession and use of the town, and the city, its inhabitants and the public, as the public ground of the town or city, that especially the landings and wharves at the foot of the several cross-streets, improved under the authority, and principally at the expense of the town or the city, are public property, rightfully under the jurisdiction and control of the city, except so far as necessarily used for the purposes of the ferry; that the city, therefore, has the right to collect and receive wharfage for its own use, from boats and vessels landing at any part of the esplanade, and especially from such as come to the improved landings and wharves, and that she had a right to make the lease of the wharf or landing at the foot of Monmouth street, to the owners of the steamer Commodore, who, as she avers, had a right, under the authority of Congress, and of the license obtained by them, to use the same in carrying on the trade and navigation between the States of Ohio and Kentucky, and for the purpose of freely receiving and disembarking persons and property, in the course of that trade, upon and across the Ohio, the free navigation of which is secured by inviolable guarantees to all the citizens of the United States. The same right of navigating the river, for the purpose of carrying on trade and commerce, between the two States, upon its opposite banks, and of using the wharf or landing at Monmouth street, under the lease from the City of Newport, is asserted by the owners and managers of the Commodore.

This is the substance of the allegations and claims of the defendants, as presented in their answers to the bill. It appears, however, that after the injunction was issued and served, some change was made in the ownership of the Commodore, and under a ferry license obtained from the city authorities of Cincinnati, she was continued or was again engaged in the business of transporting passengers and property across the river, from Cincinnati to the landing at Monmouth street, in Newport, and was, to some, but a mere limited extent, engaged in transporting them from Newport to Cincinnati.

Upon this being made to appear, a rule was made against the parties engaged, to show cause why they should not be attached for a contempt. No final disposition was made of this rule. But upon the hearing, the injunction was perpetuated against the Commodore and the defendants, prohibiting them, and all persons claiming under them, from receiving, at any part of the shore in front of Newport, passengers or property, to be transported across the Ohio to the opposite shore, and also prohibiting them from landing in front of Newport persons or property transported from the opposite side, and the entire privilege of ferrying across the river from both sides, was adjudged to be in the plaintiffs alone. The claim on the one side for an account of wharfage received, and on the other for an account of the profits of the ferry, were disallowed, as was also the prayer of the city for a conveyance of the ferry right to her. But the master was directed to ascertain the amount of ferriages received for the transportation of persons and passengers across the river by the Commodore, and other matters pertaining to the claim on that account and the esplanade. This last branch of the decree being interlocuting, the proceeding which it directs is not before this Court for revision, though its propriety would be effected by a denial of the right which it was intended to effectuate. The defendants have appealed from so much of the decree as perpetuates the injunction and defines its extent, and as to so much as denies and dismisses the claim of the City of Newport to a conveyance of the ferry, and for an account of the profits of the ferry. And the executor of Taylor has taken a cross-appeal from so much as denies and dismisses his claim to an account of wharfage received by the city.

It will be seen from the detailed statement, which has been made of the pleadings in this case, and from the decree which has been appealed from, that numerous as the subordinate questions of fact and law may seem to be, they may be reduced to three principal enquiries, relating first to the nature and extent, under the laws of Kentucky, of the ferry privilege, which has been so long exercised under the grants to the Taylors; second, to the nature and extent of the privilege belonging to the Commodore and her owners, in virtue of the license relied on, and *and* to the efficacy of the license to authorize a substantial interference with the ferry privilege, as held under the laws of Kentucky; and, third, to the condition in law or equity of the esplanade, and entire space between the Ohio river and the lots in Newport, as being public or private property, and the incidental rights, public or private, which pertain to the legal or equitable property in the esplanade, or space referred to. And under this last enquiry will come the question as to the claim of the city to the ferry right and its profits, and as to her right to the wharves on the river front, and to wharfage, and to other uses of a public nature, in the space between the lots and the river.

Before entering upon these enquiries, it is proper to notice two

preliminary objections made to the decree, which are, that a court of equity does not and should not take jurisdiction of this right asserted and the relief sought by the bill, and that if the Court may take jurisdiction, there is a want of parties capable of sustaining the bill, and of claiming and receiving the relief prayed for. Upon the first of these objections, it is admitted that the ferry right or privilege is not only a legal, but a statuary right, protected by statuary penalties. But the enforcement of these penalties is not the only remedy by which the right may be vindicated. The common law furnishes, in addition, the action on the case as a universal remedy for the disturbance of franchises, of which the right of ferrying for toll is certainly one, and it is difficult to find a good reason why this right, made appurtenant to an estate in land, should be excluded from the benefit of the principle that the possession, clothed with the title, may be quieted by the decree of a court of equity, against disturbance from adverse claims, or from the other principle, which, even where there has been an actual disturbance, for which the law furnishes redress, by way of damages, for the injurious act, yet if the injury be of a continuous nature, and be committed under a claim which indicates a continuance, or frequent and constant repetition of it, authorizes the interposition of a court of equity, not merely to redress the injury actually done, which is the only direct operation of the legal remedy, but mainly to afford the more efficacious relief of preventing the vexation and harrassment of continued disturbance, to be redressed by a multiplicity of suits, and of preserving and protecting the right by restraining the commission or repetition of the threatened injury. And if in ordinary cases it be necessary to put the right in litigation at law, and to establish it there before this more effectual jurisdiction of the chancellor can be invoked, such a requisition would seem to be inapplicable where the right is already established, and in fact originated by the judicial action of a tribunal having exclusive jurisdiction to grant the right, or if the requisition be applicable it would seem to have been substantially complied with, and its objects virtually attained, by defeating the repeated attempts to establish an additional ferry in opposition to the rights claimed under the grant to Taylor, the result of which attempts have, in effect, confirmed that grant, and effectually recognized the rights flowing from it. The nature and extent of those rights are defined by statute, and a court of equity is as competent to ascertain, and more competent to enforce and protect them, than a court of law.

Other grounds, besides that of furnishing a more adequate and complete remedy, and the only effectual one, might be referred to as sustaining the jurisdiction of the court of equity in this case. But whatever may be the theory on the subject, the jurisdiction in similar cases is now too well established in practice, and by reason and precedent, to be successfully questioned. It is deemed sufficient to

refer, in support of this conclusion, to the cases of Livingston *vs.* Van Ingen, 9 Johnson's Reports, in which, at page 585, Kent, Chief Justice, lays down the position, and sustained it by numerous authorities, British and American, that "injunctions are always granted to secure the enjoyment of statute privileges, of which the party is in the actual possession, unless the right be doubtful. And, it might be added, that the question of dedication, and the conflicting claim growing out of it, have been an ordinary subject of chancery jurisdiction. Upon the objection with respect to parties, it might be sufficient to say, that we do not perceive that the objection was made in the Circuit Court. And, according to the 123d section of the Code, it comes too late, if made for the first time in this Court. But, waiving this ground, we are of opinion, that although the grant of a ferry may be regarded to a certain extent as a personal trust, the right, during the subsistence of the grant, is transmissible sub modo with the land itself, to which it is appurtenant by descent, or devise, or sale, or lease, the consent of the County Court having jurisdiction to grant the ferry, being required in case of sale or lease, and a new bond or covenant being required in all cases of a change of title, whether by act of the parties or by operation of law. These, and other regulations on the subject, not necessary to be mentioned, are contained in the Revised Statutes relating to ferries. But by the will of James Taylor, to whom this ferry was granted in 1807, his son and executor, James Taylor, one of the plaintiffs, was authorized to rent out the ferry, and all other ferries which might be granted during his life, and to receive the proceeds, of which a part is specifically appropriated, and the residue may be subject to account, but there is no direct devise of the ferry itself, nor of the esplanade, until his death. Such right, therefore, as the testator had in the ferry, either descended to his heirs during the life of the executor, who, as has been stated, executed bond in the County Court, or it vested in the executor during his life, in virtue of the power given to him to rent it out, and receive the rents, which necessarily included the power of superintending, controlling, and, if necessary, even of using it for the purpose of making the profits, which were disposed of by the will, and it has been seen that he and his lessee executed the proper bond. If any shadow of title passed to the heirs, of whom the executor was one, they had no real interest, but the substantial and beneficial interest during his life, vested exclusively in him as trustees for the devisees, of whom he was also one, and if he had not the legal title he had the power to pass it, and did pass it by his lease to Air. As trustee of an express trust, he had a right to sue without uniting his cestui que trust for the preservation of the subject, and in vindication of the right from which the profits were to be derived. And although his interest as executor was for life, only while the interest of his lessee was even more limited, we are of opinion that to the extent of these actually

subsisting interests, united as they were with the possession, they, as the parties whose rights and interests were directly affected by the acts committed and threatened, to the injury of the privilege which they claimed and were enjoying, had the same right to the aid of the court of equity, for the protection of their interests, and to the full execution of its powers, as far as necessary to that purpose, as if they, or one of them, had been possessed of the fee simple estate. They hold the possession, and are entitled to maintain their temporary right, for the benefit not only of themselves, but of those also who are to come after them, in remainder or reversion.

If it were conceded that the loss or impairment of the present right claimed by the plaintiffs, the one as executor and the other as lessee, would not bar the claim to the same right by those who may become entitled in remainder; and that, therefore, the plaintiffs should be deemed incompetent to litigate the entire right, or to claim or have as relief commensurate with such litigation; this concession would only limit the extent of the relief to which they might be entitled, and would not tend to a total denial of all relief.

Assuming that James Taylor, the testator, was entitled to the ferry under the grant of 1807, and by his long possession afterwards, we are of opinion that his will invests his executors with the substantial rights of a tenant for life, and makes him a devisee for life in trust. He is, therefore, to be regarded in equity, at least as a tenant of the freehold, having the right to defend and maintain, in that character, and at least to the extent of that interest, the title of which he holds an important portion. And we may here say, that whatever doubts there might be as to the efficacy and intention of the deed of James Taylor, of Virginia, made in 1799, to convey to James Taylor, the testator, any part of the land lying between the lots in the Town of Newport and the Ohio river, which is represented in both of the plats, and regarded in the Act of 1795, and recognized in the opinion of this Court, reported in 6 J. J. Marshall, supra, as a part of the town, there is no doubt of the intention of the grantor to convey the entire ferry right, present and future, from the shore in front of the town, and from all parts of it. And whether this could or could not have been legally and effectually done without conveying to the grantee the title to the soil itself, or some part of it, the grantee of that deed, used and held the existing ferry under it until 1807, when the Court which had jurisdiction, considering him as having been invested by the deed with the ferry right which had been granted to his father, and as being, therefore, entitled to the benefit of the Act of 1806, in confirmation of previous grants, established the same ferry in his name, by an order which was in effect a new grant of the privilege to him; and the same ferry has been continually used by him, or under his authority, from that day to this. The transfer of the then existing ferry privilege, and the subsequent renewal of the

grant on the basis of that transfer, sanctioned as they are by a possession of fifty years, cannot now be questioned. And the ferry privilege, or right, as it has been used under the grants abovementioned, and with such rights as pertain to it by law, must be regarded as having been indisputably vested in the testator at his death, and as having passed by his will, under such restriction, already referred to, as the law imposed.

We come, then, to the first principal inquiry, what is the nature and extent, under the laws of Kentucky, of the privilege conferred by a grant of the ferry-right across the Ohio river, by a County Court having jurisdiction to grant it? And in answering this enquiry we observe that the laws of Kentucky do not profess either to grant, or to secure or protect the right of ferrying across the Ohio river, except from this to the opposite shore, nor do we find that there has been any attempt, by statute, to regulate or interfere with the transportation from the other side to this, under authority derived from the laws and government on the opposite side. But the right of any State or Territory to grant, within its jurisdiction, the right of ferrying across the Ohio, has been uniformly recognized and respected, and, so far as we can discover, never denied. It will be recollected that in the order of January, 1794, which granted to James Taylor, of Virginia, the first ferry from the Town of Newport, he is authorized to charge the same fare that is allowed from the other side. This implies that there was, even then, a ferry from the other side, which, however, does not otherwise appear. It seems, however, that at different times since 1807, and while Taylor's ferry was in operation, there had been ferries from the other side, which were carried on for short periods, but of which none, so far as appears, was obstructed in bringing passengers, &c., &c., from the other side.

The preamble of the act of 1806, under which the grant of 1807 was made to James Taylor, of Campbell county, recites: "that the County Courts of several counties on the Ohio river had granted ferries across said river *to the opposite shore.* The first section of the Act provides that the bond to be given in confirming such grant shall express in its condition that, whereas a ferry hath been established from the land of said ———, *across the Ohio river to the opposite shore,*" &c. The third section authorizes the several County Courts aforesaid (that is, of counties on the Ohio) to establish ferries across said river, *to the opposite shore.* And the seventh section denounces a penalty against any person not authorized by said County Courts, or by this Act, who shall transport passengers or property across said river to the *opposite shore.* This act of 1806 provided that no ferry should be established on the Ohio, within one mile above or below an established ferry, unless it be in a town, or rendered necessary by an impassable creek, or *be opposite to some established ferry in the Ohio State.* An act of 1812

denounces a penalty upon any citizen of Kentucky who, without authority from the laws of this State, or of the State or Territory *opposite to* an establisbed ferry, shall transport passengers or property across the Ohio river, from the opposite shore to the Kentucky shore, within one mile, in a straight line. above or below an established ferry, for any reward or promise thereof. The Act of 1836, which is confined in its operation to the County of Jefferson, imposes a penalty upon the owners, &c., of ferries established from the opposite side of the Ohio, and not having the grant of a ferry from the Kentucky side, for transporting, without arrangement with the owner of the ferry on this side, and to its prejudice, any person or thing, with or without charge, from the Kentucky shore to the opposite side of the river. And the *Revised Statutes, Title Ferries, section* 14, *page* 360, adopted in 1852, denounces a penalty against any one who shall, for reward, transport any person or thing across a water-course, from or to a point within one mile of an established ferry, unless it be the owner of an established ferry on the other side of the Ohio or Mississippi river, so transporting to such point on this side, and also against any owner (his lessee or servant) of a ferry on the other side of either of those rivers, who shall so transport from this side without reward.

These statutes, and among them the revised statutes which, as we suppose, contains the present law upon the entire subject, sustain fully the proposition first laid down in this part of the case, and establish the fact that Kentucky has never claimed the exclusive right of ferriage across the Ohio river, except from this shore, and while she has interdicted the establishment of ferries from this side, within a certain distance of an established ferry on this side, she has constantly recognized the right of the authorities on the other side to establish ferries from that side without regard to the interdict. The revised statutes prohibits the transportation for reward across the river, to or from either shore, within one mile of an established ferry on this side, unless by a ferry established on the other, which may transport to this side; and prohibits such transportation (within the interdicted distance) from this side without reward, even by a ferry established on the other side. The opposite ferry is thus prohibited from taking passengers, &c., from this side, within one mile of an established ferry, whether with or without reward; and all others are prohibited from either taking from this side or landing upon it, at any point within the interdicted distance, persons or property transported or to be transported for reward across the river. To this extent the State claims jurisdiction for the protection and preservation of her own established ferries, and by virtue of her sovereignty over her own territory, on which, in the cases prohibited, persons and property must be landed from or received for transportation across the river. The exclusive privilege granted to ferries established under the authority of this State does not exceed

the right thus claimed by the State, but is more restricted since it is subject to diminution by the establishment of ferries within the distance of one mile and a half on the Ohio river, in a town or city, or if an impassible stream intervenes. The right thus claimed by the State over its own territory on the river, and for the protection and benefit of its own grantees of the ferry privilege, it has not at any time denied to the States on the other side. Nor do we perceive that in any of the statutes, which have been passed for the general regulation of ferries, and of the ferry right, she has overstepped the limits of that concurrent jurisdiction over the Ohio, which, by the 11th section of the compact with Virginia, is conceded to be in the States which passes the opposite shore of that river. Some comment was made by this Court upon the effect of this concurrence of jurisdiction, in the case of Arnold, &c., *vs.* Shields, 5 Dana, 22, which arose under the Act of 1836, above noticed. It was then said that this concurrence of jurisdiction gave or implied equal power over the common river, in the States on the opposite side, and that neither of the States referred to, could, consistently with the compact, exercise any authority over it which would destroy, impair, or obstruct the concurrent rights of the other. If this be the true exposition of this provision of the compact, and it is certainly not too restricted, it has not been violated by the ferry laws of Kentucky, which concedes to the States on the opposite shore of the Ohio the same rights on this subject which she exercises herself. As they make no discrimination in favor of the citizens of Kentucky, when not acting under authority derived from her, over those of other States acting without the sanction of public authority derived from them, the inhibitions and penalties of these laws must be regarded as the exercise, in good faith, of the undoubted right and duty of the States, as well on this as on the other side of the river flowing between them, to provide for and secure for common use, upon their respective sides, suitable means for the safe and speedy passage of persons and property across the river to the opposite shore. And if it be conceded that this common right and duty of the States on each side gives no right to land the vessel used for transportation from the one side, upon the private property of individuals on the other, without their consent, it must also be conceded, that the authorized vessel used for transportation from either side may use for landing on the other, its freight, or persons, or things, either private property, with the consent of the owner, or the public highways coming to the water's edge, or subject to suitable charges, and at any rate, by consent, the public wharves or other accommodations furnished on the shore for embarking and disembarking persons and property. These rights existing on the side of the river opposite to that on which the right of transportation from its own shore is granted, do not imply nor flow from any authority in the State which grants the privilege of transportation from its

own side, but which has no power or jurisdiction on the other. They are the individual rights of all persons to pass to and fro, across the river, and whatever right may be supposed to pertain to the vessel itself, in the State opposite to that in which it was licensed, is derived, not from the license nor from the authority which grants it, but from the rights of individuals, of which it is the instrument. These rights of ingress and transit, dependent among nations absolutely sovereign, upon the general principles of international comity, or an agreement, and ultimately upon the will of each, so far as its own territory is concerned, have, unquestionably, a firmer foundation in the principles and provisions of the Constitution, which establishes the union of the States, and secures the free and peaceful intercourse of their respective citizens. It is not inconsistent with these principles and provisions, nor with the rights they intend to secure, but is, on the contrary, essential to the enjoyment of these rights, that the States bordering on a naviagable river which flows between them, should possess and exercise the right of granting and controlling the privilege of ferrying from their respective shores, with such restrictions, as to competition, as may be deemed necessary to secure the proper accommodations for travel and trade, and with such regulations as will secure a speedy and comfortable passage across the river, and which is more important to each or every State, separately considered, with such regulations and restrictions as may be necessary for the preservation of the property and rights of its own citizens, as to which none can be expected to judge so well as the State herself, and for which, so long as she violates no right of others, none can better provide. The public highways and thoroughfares extending to the rivers are the best indications of the places where transportation across them from either side is required for the public accommodation, and if free ingress is allowed at these points to all who, under the just exercise by the State of its essential conservative power, have a right to enter upon or depart from its territory, there can be no complaint of an excess of its own jurisdiction, or of an invasion of the rights of others. Nor is the restriction of the transportation across the Ohio river to the established ferries for one mile above and below those established on this side, and the exclusive privilege within that distance secured to our ferries for the transportation from this side, an infringement to the right of the free navigation of the Ohio river, secured to all the citizens of the United States. The primary object of that guarantee was to secure to the citizens of all the States the right of navigation to and fro along the stream for the purpose of trade and intercourse, and free from obstruction or impediment by the laws or under the authority of any of the States along whose borders they might pass. But it could not have been intended to deny, and does not necessarily or fairly import a denial or impairment of the territorial rights and sovereignty of the States

over their own soil adjacent to the river, further at any rate, than in particular cases may be necessary to the use and enjoyment of the right of navigation itself. And if the right of crossing the river from shore to shore be included in the guarantee, still as the establishment of ferries at convenient distances, and the regulation of them, with a view to insuring a safe and speedy passage from bank to bank, is absolutely essential to the effectual and beneficial enjoyment of the right by all, the exclusion of unauthorized competition, being a necessary means of keeping up for general accommodation the established ferries, so far from being an interference with the free passage across of those who desire to pass, is the best and only certain provision for the passage of those who are not themselves provided with the means of crossing. And we do not understand that persons residing on the river are prohibited from transporting themselves across it by such means of their own as they are provided with. The exclusive ferry privilege, as it exists under our laws, having been thus minutely considered and defined, and the right of the State, as heretofore exercised, to grant and regulate it, having been shown not to be inconsistent with the just rights of others, but to be but the exercise of its duties in aid of the rights of individuals, it only remains to say, under this branch of the subject, that while the laws have, for the benefit of the public, given to the owners of established ferries some exclusive privileges, they have, also, for the benefit and security of the traveling and trading public, imposed upon them onerous duties, requiring them to furnish not only suitable boats for transportation of persons and property with comfort and safety, and to give them immediate passage across the river, and at rates fixed from time to time by the County Court, but, also, to provide suitable accommodations for reaching and leaving the boats, and as a measure of safety found necessary in the course of events, they are prohibited from carrying slaves across the river without the consent of their owners. Their duties in all of these particulars are secured by bonds, to be renewed at short periods, by liability to damages for injuries caused by neglect or breach of duty, by penalties, amounting in some cases to a forfeiture of their privileges, and by a constant subjection to the supervision and control of the court of the county in which they are situated. They are, indeed, agents of the public, invested with important rights, as the consideration and means of performing important duties with which they are charged, and for the due performance of which they are held to a strict scrutiny and a heavy responsibility.

We think it manifest from what has been said, and there are other considerations tending to the same conclusion, that the privilege of ferrying for toll, and especially of ferrying across the Ohio river, which runs between this and other States, is a privilege grantable only by the public, and to be exercised under such regulations as the public may deem requisite for the safety, comfort, and conve-

nience of all concerned, and that it is no less the duty than the right of the government which has jurisdiction over ferries, to exercise it with a view to the attainment of these ends. And this brings us to our second inquiry, which is, in substance, whether the license of the Commodore, under the laws of the United States, conferred on her, or her owners, the privilege of transporting persons and property, to and fro, across the Ohio river, between Newport and Cincinnati. If this occupation was not, as it most clearly was an exercise, or attempted exercise, of the right of ferrying for toll across the river, it was a manifest violation of the statutes of Kentucky, unless the license be deemed equivalent to the grant of the ferry privilege from both sides of the river. But the Commodore was in fact engaged in the regular business of ferrying from shore to shore, under color of a license for carrying on the coasting trade. And it is contended that the power of Congress to regulate commerce among the States, includes the power to regulate the navigation, and the vessels by which that commerce is carried on; that Congress under this power having many years ago (in 1793) enacted regulations for vessels engaged in this trade, and provided for the inspection, enrollment, and licensing of such as were adapted to it, whereby they were authorized to enter any ports of the United States, and land at any places, for purposes of trade. The subsequent Act of 1838 "to provide for the better security of the lives of passengers in vessels propelled by steam," requiring all such vessels to be inspected, enrolled, and licensed under the authority of the United States, and prohibiting any without such license, to transport passengers or goods on the lakes, bays, rivers, and other navigable waters of the United States, the license obtained under this act gave a similar right to the Commodore and her owners, and especially when engaged in carrying on commerce between the States, to enter any ports, or open and public places, in the course of trade, and to receive and put out on the public wharves, and to transport on the Ohio river, to or from any port or place in Kentucky, to or from any port or place in Ohio, passengers and freight, constituting a part of the commerce between those States, of which a large amount passes, or is carried on, between Newport and Cincinnati. If, by the operation of this act, every steamboat which receives the license provided for is thereby authorized to transport persons and property across the Ohio, or any other navigable river, from bank to bank, or from State to State, situated upon the opposite banks, the power of the States to establish and regulate ferries, and to give them the protection required for their beneficial operation, is in effect nullified, or may at least be overborne and disregarded, at the pleasure of every owner of a licensed steamboat, who may choose to exercise the privilege of ferrying in contempt of that power. If the power may be thus set at defiance with impunity, it is in effect no power. Its

existence is but a name, its attempted exercise a mockery, a delusive promise, without the power of performance.

If it were conceded that the commercial power vested by the constitution in the Congress of the United States, might be legitimately exercised in the regulation of ferries, transporting persons and commodities across a river flowing between two States, and that where there is a conflict between the regulations enacted by Congress, and those of the States on the same subject, the latter must, under the mandate of the constitution, yield to the former. Still a power of this character so long exercised without question, not only by this State, but by every other State similarly situated, a power essentially local, and in its immediate operation affecting local interests only, dependent for its judicious exercise upon local knowledge, founded on the jurisdiction and power of the State over its own soil, and the persons and property of its inhabitants, and necessary for the proper exercise of its rights and duties for the protection of its citizens and their property, as well as for the safety and convenience of others passing to and from its territory, a power of this character whose existence as a remnant of sovereignty left in the States, is thus sanctioned by time, thus approved by considerations of fitness, and thus demonstrated by necessity, is entitled to too much respect to be defeated by anything less than an unequivocal assertion, either express or by necessary implication of the conflicting power, or to any greater extent than such conflicting power is exerted under the clear sanction of the constitution.

If the commercial power vested in Congress may be exercised upon every subject, the regulation of which may more or less remotely affect the commerce between or among the States, which we do not admit, it would not follow, and cannot be admitted that the mere existence of such a power granted, if granted at all, only for the general good of all, and for the promotion of harmony, and the maintenance of union among the States, should have the effect of depriving the States of all power of making any regulation which may remotely or incidentally affect that commerce. And the conclusion which, as it seems to us, is at once most consistent with the admitted supremacy of the constitution and the constitutional acts of Congress, and with the constitutional independence and sovereignty of the States, is that there are some subjects which although the regulation of them may incidentally affect commerce between or among the States, are either wholly excluded from the commercial power of Congress, or are open to the Legislation of the States until Congress legislates upon them, and so far as it does not so legislate, and there may be different subjects coming under both classes. The proposition that the power of Congress extends to all subjects, the regulation of which may, however remotely, affect commerce among the States, and that the mere grant of the power, though not exercised, is a prohibition of its exercise by the States, is inconsistent

with the essential rights of self-government and self-preservation, which never were, and so long as they retain a vestage of independence, never can be yielded by the States. It may be admitted that the States have not the power to regulate the commerce between them, and yet be true, that they have other powers, the exercise of which may incidentally affect that commerce, and the constitutionality of such an exercise of an admitted power, not directed to the regulation of commerce, but to the regulation of other subjects or objects within the jurisdiction and power of the State cannot be questioned, and certainly cannot be denied, unless it come in conflict with some regulation made by Congress in the legitimate exercise of its constitutional power to regulate this commerce.

This, as we understand the case of Gibbons vs. Ogden, 9 Wheaton, p. 1 and 5, Condensed Reports, 563, is the doctrine, express and implied, of the opinion of the Supreme Court of the United States delivered in that case by the Chief Justice, and with some differences of opinion among the successive judges of that Court as to the extent of the power granted to Congress to regulate commerce, and as to the question whether, and how far the grant is exclusive, the same doctrine has been substantially maintained to the present time. In the first place, it is conceded in that opinion, that the power of taxation necessarily remaining in the States is shown by the restriction upon it in the second clause of the tenth section of the constitution, to have included in the opinion of the convention the power of laying duties on imports and exports, and tonnage duties, although they operate upon commerce. And again in speaking of inspection laws which are also recognized by the same clause as being within the power of the States, and which are admitted to have a remote and considerable influence on commerce, though not derived from the power to regulate it, the Chief Justice says, "They form a portion of that immense mass of legislation which embraces everything within the territory of a State not surrendered to the general government, all which can be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of the State, and those which respect turnpike roads, ferries, &c., are component parts of this mass." And he proceeds to say: "No direct general power over these objects is granted to Congress, and consequently they remain subject to State legislation. If the legislative power of the Union can reach them, it must be for national purposes, it must be where the power is expressly given for a special purpose, or is clearly incidental to some power expressly given." The proposition is then advanced, that although the power to enact quarantine and health laws for the proper object, be in the States, such laws may be controlled by Congress, so far as it may be necessary to control them for the regulation of commerce. And

so, while the regulation of pilots is said to be within the power to regulate commerce conferred upon Congress, it is also admitted that the acknowledged power of a State to regulate its police, its domestic trade, and to govern its own citizens, may enable it to legislate on this subject to a considerable extent. And in a previous part of the opinion, a general principle of discrimination between the powers conferred upon the government of the Union, and those retained by the States, is stated in the following terms. The genius and character of the whole government seems to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally, but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere for the purpose of exercising some of the general powers of the government. And upon the question, whether the power of Congress to regulate commerce among the States, stops at the jurisdictional lines of the several States, he asks the significant question, "Can a trading expedition between two adjoining States, commence and terminate outside of each?"

From these general propositions, which, without going into the details of the subject, yet cover the whole ground, it is clearly deducible, that although the commercial power granted to Congress may have been considered as embracing the entire subject, and every part of the subject, of commerce between or among the States, there yet remained in the States power over many subjects connected with that commerce, and the regulation of which, by the States, though it might incidentally, and in a greater or less degree, affect that commerce, must prevail until Congress, under its comprehensive power, to be exerted for national purposes, should make a different regulation of the same subject. Without attempting to trace these principles through the various decisions of the Supreme Court, in which they have been involved, it is deemed sufficient to notice two only, viz: that of *Wilson* vs. *The Blackbirk Creek Marsh Company*, 2 Peters, 250, and that of Cooley *vs.* The Board of Wardens of Philadelphia, 12 Howard, 311, decided 1851.

In the first of these cases the question was, whether an act of the State of Delaware, authorizing the construction of a dam across Blackbird creek, was constitutional. The tide had ebbed and flowed in the creek, higher up than the place where the dam was erected. The dam stopped a navigable creek, and abridged the rights of those who had been accustomed to use it. But the Court uses the following language: "The value of the property on its banks must be improved, by excluding the water from the marsh, and the health of the inhabitants probably improved. Measures calculated to produce these objects, provided they do not come in collision with the powers of the general government, are undoubtedly within those which are reserved to the States. And while it

is said, that if Congress had passed any act in execution of its power to regulate commerce, the object of which was to control State legislation over these small navigable creeks, the State law conflicting with it would be void, it was decided that, as Congress had passed no such law, its power to regulate commerce had not been so exercised as to affect the question of the repugnancy of the law of Delaware, to the power of regulating commerce conferred by the constitution.

In the other case referred to, (12 Howard, 318,) the question whether the grant to Congress of the power to regulate commerce, did, per se, deprive the States of all power to regulate pilots, is expressly discussed and decided. And on the ground that it is not the mere existence of the power over commerce, but its exercise by Congress, which may be incompatible with the exercise of the same power by the States, which, therefore, may legislate in the absence of congressional regulations, and on the ground that this power embraced not only a vast number, but a great variety of subjects, some requiring a uniform rule, and others, like that of pilots, demanding a diversity of regulation, to meet the local necessities of navigation, and in view of the legislation of Congress, on the particular subject, it was decided by a majority of the Court: 1st. That the mere grant of the commercial power to Congress, did not deprive the States of the power to regulate pilots; and 2d. That although Congress had legislated upon the subject, its legislation manifests the intention, with a single exception, not to regulate this subject, but to leave its regulation to the several States.

If, then, it be true, that the power of Congress to regulate commerce among the States, may extend to the regulation of ferries from the State on one side, to that on the other side of an intervening river, and that the conflicting State laws must yield to such an exercise of the power, it must be admitted that the subject is obviously and peculiarly one of that character which demands such regulation as will meet the local necessities and convenience. And that whether tested by the principle of the case referred to in 2d Peters, or of that in 12th Howard, or by the more general principles of the case of Gibbons *vs.* Ogden, it is one of those subjects over which the power of the States, exercised, as it has been from the beginning, must prevail until the subject is regulated by Congress, and except so far as it is so regulated. If the subject of ferries be, to any extent embraced in the power granted to Congress, as to which we do not in this case deem it necessary to inquire, it is certainly one of those contemplated by the opinion of the Court in the case of Gibbons *vs.* Ogden, which can be most advantageously regulated by the States, and over which no direct power being conferred by Congress, if the legislative power of the Union can reach them at all, it can only be for national purposes, and under a power

expressly given for a particular purpose, or clearly incidental to some power expressly given.

Then the real question in this part of the case is, whether Congress has, to any extent, regulated ferries across the Ohio, or any other river, from State to State, and how far, if to any extent, it has regulated, or attempted to regulate, them? The Act of 1838, above referred to, is in its descriptive terms of the vessels to which its requisitions of a license, and its penalty for navigating without one, apply sufficiently comprehensive to embrace all vessels propelled by steam. But the requisition of the first section, that the owners shall make a new enrolment of the same, under the existing laws, and take out a license under the conditions now imposed by law, and which shall be imposed by the act itself, seem to imply that only such vessels as might be required to be enrolled under previous laws, were intended to be embraced in the act. And on this ground, and because the requisitions of the previous laws referred to, and especially of the Act of 1793, were not deemed applicable to ferry-boats making many trips each day, across a narrow river, Judge Catron, a Judge of the Supreme Court, presiding in the Circuit Court for Kentucky, in an opinion, of which a manuscript copy is before us, decided that a steam ferry-boat, used for ferrying across the Ohio river, was not intended to be embraced by the act, and that the penalty which it imposes for not having obtained a license, could not be enforced against the owners of such boat. It may be added, as confirmatory of this view of the Act of 1838, that some of its own provisions for the safety of passengers would seem to be applicable to longer voyages, and scarcely necessary, in reference to the short and frequent trips of a ferry-boat. The title of the act also indicates what is notorious in the history of the times, that this action of Congress, embracing steam vessels navigating our western rivers, was especially induced by the many disasters, involving, to a frightful extent, the loss of life or limb, which had occurred in the longer voyages up and down the rivers, and it was to afford better security against such disasters, arising as they did, from the insufficiency of the boat, or its engine, or equipments and officers, that the inspection enrolment, and licensing of steam vessels were required, and other provisions made, for the same purpose.

But if it were conceded that this act, so far as it provides for the safety of passengers from the dangers of steam and of fire, necessary for its generation, should be deemed applicable to all steamboats, whether used for ferrying or for other purposes, it would not follow that Congress intended by this act to assume the general regulation of ferries, transporting persons and property from State to State, or to regulate their establishment and rights or duties, or to interfere with those already established by the States, any

further than to require the inspection, enrolment, and license, for which it provides. To say nothing else, the absence of all provision for securing the speedy and regular transportation of persons and property across any river, and for meeting the requirements of travel and trade in passing from one to the other side, shows conclusively that Congress did not intend, in passing this act, to assume the office of regulating ferries, which had so long been safely and beneficially exercised by the States. If the license required by this act, authorizes the owners of the licensed boat to transport persons and property across a river, whenever and wherever, and on such terms as they choose, it authorizes them to violate the rights of individuals, to invade and contemn the jurisdiction and power of the State, and to destroy or impair the efficacy of establishments created and made suitable to meet the exigencies of trade and intercourse between the States, without imposing the plainest and most essential requisitions for carrying on that commerce, under color of regulating which the authority must be supposed to have been granted. We cannot concede that any such authority was intended to be given, nor can we concede that, if given in the manner, and under the circumstances stated, it would be valid for the purposes claimed.

But in addition to the considerations just mentioned, and to others before noticed, which must have an important bearing not only upon the question of the extent of the power conferred in Congress, or remaining in the States, but also upon the construction of the acts of Congress in the execution of its power, the Act of 1852, entitled "an Act to amend an Act entitled an Act to provide for the better security of the lives of passengers on board of vessels propelled by steam, and for other purposes," affords, as we think, conclusive confirmation, if confirmation were necessary, of the opinion that the Act of 1838, so far from being intended to regulate ferries, or to authorize any interference with them, under color of the license which it provides for, was, probably, not even intended to apply to steamboats engaged in the business of ferrying.

The Act of 1852 embraces, in substance, the provisions of the previous act, with additional details and requisitions, carried out with great minuteness and precision, and enforced by numerous penalties. It commences by declaring that no license or enrollment shall be granted under this or the former act, to any vessel propelled, &c., until satisfactory evidence shall be produced, that all the provisions of this act have been complied with, and for non-compliance, the owners and vessel are subjected to the penalties contained in the second section of the former act. As the provisions of this act seem to continue and extend, or enlarge all the provisions of the Act of 1838, there seems to be no part of that left in actual force and operation.

Then the 42d section of this Act of 1852 expressly declares that it shall not apply to steamers used as ferry-boats. And the 44th section expressly repeals all parts of laws theretofore made, which are suspended by, or are inconsistent with, this act. This act, then, which covers the whole subject, referring only to the penalties of the Act of 1838, for non-compliance with the provisions of the Act of 1852, is considered as superceding, and, in effect, repealing the Act of 1838. And, if it is not to have this technical effect, it shows, at least, when taken as it should be, in connection with the previous act, that it was not intended that either should apply to steamers used as ferry-boats. And the fact that, in 1838, steam ferries were little used, may account for the failure to exclude them from that act. It was certainly not intended by the last act, that any steamer should be licensed merely upon compliance with the provisions of the first, for this would be directly inconsistent with the first section. And, as the last act does not apply to steam ferry-boats, there is no authority for licensing such a vessel under either act. It would be very strange then, and, as we think, inadmissible, to suppose that while no license can be granted to a steam ferry-boat under the laws relating particularly to vessels propelled by steam, such a license could be granted under laws for regulating the coasting trade, passed before steam vessels were in use, and which, at any rate, make no particular reference to them. The Act of 1838 requires a new enrollment of steam vessels, under then existing laws, and a new license under the conditions imposed by those laws, and by that act. The Act of 1852 prohibits any enrollment or license of steam vessels, but upon terms prescribed by that act, which terms had not been required by any previous act, and do not apply to steam ferry-boats. The Commodore appears to have been inspected, enrolled, and licensed in 1854. Whether her owners complied with the act of 1852, it is not deemed material to inquire. If they did not, we suppose her license, being obtained in violation of law, is of no avail. If they did, her license to be employed in carrying on the coasting trade, under the laws regulating that trade, which, so far as we can discover, never have been understood to confer the right, ferrying, properly so called, did not, in our opinion, confer upon her, or her owners, the right of transporting persons and property as a ferry-boat, between Newport and Cincinnati, to the disturbance of the ferry established there, and to the injury of those entitled to it.

This opinion having been already extended to an unusual length, we shall limit our third inquiry to as brief a space as practicable. The facts relating to the esplanade and the entire space between the lots in the Town of Newport and the Ohio river, have been substantially presented in our preliminary statement, and in the statement made of the claims and pleadings of the parties. The location of the town, the plat made in 1791 or 1792, presenting an open space between the front street and the river, and the re-survey and

new plat made in August, 1795, having words written on the open space, indicating its appropriation to the public, together with the sales of lots made under both before the passage of the Act of 1795, are circumstances which, according to the repeated decisions of this Court, would in the absence of proof to the contrary, suffice to establish a valid dedication of that space for all the public uses to which it was appropriated. The reasons given by Hubbard Taylor, the agent of the proprietor, for not laying out that space into streets and alleys, not having been, so far as appears, communicated to the public, or to the purchasers of lots, could not repel the presumptions arising on the face of the plat. And, although, before the second plat was made, the established ferry might be sufficient to show that the right of ferry was intended to be reserved, there was nothing on that plat to show that anything else was reserved. The claim of the ferry-right, from the time of its establishment, may have been acquiesced in by the few persons interested, in consideration of the advantage of having a ferry to which no other individual but the original proprietor was entitled. The ferry-right was doubtless the principal object of the reservation, made in the 7th section of the Act of 1795. And although there may have been no precise notion on any side, of the uses of the space next to the river, declared to be for a common, the visible ferry carried on by the proprietor, must have apprized all concerned, that the ferry-right was intended to be reserved. The acquiescence in the act thus understood, and in the right of ferrying claimed and exercised under it, is sufficient, not only to establish the presumption of consent at the time, and, perhaps, of an original reservation, but to establish the right of itself, as against the town. And, as during the entire period, the ferry has been carried on by the Taylors, under claim of title, for their own exclusive profit, without the recognition of any right or interest in the town to the proceeds, or any share of them, and, so far as appears, without even a claim of that sort on the part of the town, we are of opinion, that by the lapse of time alone, if there be no other ground, all claim on the part of the City of Newport, not only to the legal right to the existing ferry, but to the beneficial interest in its proceeds and profits, is barred and extinguished, if it ever existed.

With respect to the title and uses of the esplanade and entire river front, we should be inclined to the opinion, if it were not for the former decisions on the question, between the same parties or their predecessors, in whose place they stand, that the legal title was vested, by the Act of 1795, in the trustees, for the general uses of the town and the public, except as to the ferry. But this Court having given a different construction to the act in the first contest between Taylor and the town of Newport, and in the renewed contest of 1850, the Court, though differently constituted, having regarded that construction as binding upon it, we should not feel at

liberty, upon the same question, between the same parties, to depart from a construction thus doubly sanctioned, nor should we do so upon any question to which it was directly applicable, but upon grounds of absolute certainty and conviction. It will be recollected, however, that, in the cases referred to, nothing was in contest but the right of ferry, and that which was essential to it, and the only point really decided was that the Town and City of Newport had no such title or interest in the open slip on the river, as carried with it the right of ferry, or authorized the grant of a ferry to her. The question whether the legal title was in the town or in Taylor, may have been necessarily decided. But the question, was other rights exclusive of the legal title and of the right of ferry, the Town and City were entitled to either under the original dedication, or under the declaration made in the 7th section of the Act of 1795, was not before the Court for decision, nor necessary to the determination of any point actually presented. The Court, it is true, in the first of the cases referred to, not only decided that the title to the slip in question was not in the town or its trustees, and consequently remained in Taylor, and that the right of ferry from the town was reserved to Taylor by the act, and that the title and ferry right had passed to James Taylor, of Kentucky, but also restricted the rights of the town in the open slip on the river to a mere right of common, which, though not defined, is understood to have been used in its technical sense, and declared that the reservation to Taylor included all rights not incompatible with the right of common, spoken of in the opinion as the commonable right of the town. But the only question was, whether the town had such right or interest in the land as was requisite to entitle it to the grant of a ferry. And the conclusive adjudication that such right was not in the town, but was reserved to Taylor, might still leave in the town all other rights and uses, not incompatible with the reservation of the right of ferry in front of the town, and which might still be properly claimed, under the dedication of the slip, whether by the plat or by statute, as a common for the town.

It was decided in the case of Rowans' executor *vs.* Portland, 8 B. Monroe, 258, that the ferry right which, in that case had been granted to the proprietor of the town, and was in use before the dedication, though attached to a portion of the slip which had been dedicated, was not essential to the public uses of the dedication, and did not necessarily pass by implication as a part of it, but was impliedly reserved to the proprietor. And yet, in that case, all other appropriate uses of the slip, for the purposes of the town and the public, and among them the right of constructing wharves and charging wharfage, were decided to have passed by the dedication. The right of ferry from the slip now in question, or from any convenient part of it, might have been reserved to Taylor, and yet all

other rights and uses, not inconsistent with, nor necessary to sustain it, might have been dedicated either by the plat and sale of lots, or by the statute establishing the town. In the original plat the dedication was not indicated, and therefore neither restricted nor enlarged by any written word. The second plat, and the statute founded on and referring to it, calls it a common, or an esplanade, to remain a common forever. Was the esplanade to be a common for pasture, a common of piscary, or a common of turbary? Was the esplanade, one-half of which, or more, was the sterile shore and bank of the river, dedicated forever to this restricted use of a town situated on the bank of a noble river, and seeking and expecting the advantages of that situation? And was not the word "common," understood, and to be understood, not in its technical sense, as being a right or profit which one man may have in the land of another, but in its popular sense, "as a piece of ground left open for common and public use, for the convenience and accommodation of the inhabitants of the town." It was understood in this latter sense by the Supreme Court of the United States, in the case of Cincinnati *vs.* White's lessee, 6 Peters, 435, and by this Court in the case before referred to, of Rowan's Executor *vs.* Portland, and in Giltner *vs.* Trustees of Carrollton, 7 Ben. Monroe, 680, and Kennedy's heirs *vs.* Covington, 8 Dana, 61. In which cases, and in others referred to therein, and in Fox *vs.* Town of Dover, 9 B. Monroe, 200, and Alves *vs.* Town of Henderson, decided at the last term, the doctrine generally applied by this Court to the question of dedication in the establishment of towns, is to be found. Then, not feeling ourselves bound by the interpretation heretofore given by this Court to the word "common," as used in the plat, and in the Act of 1795, except so far as that interpretation may be necessary to explain or to sustain the decision as to the ferry right, we are of the opinion that the dedication of the slip of ground in question, as a common, by the plat of 1795, and by the act establishing the town, was a dedication of it as public ground, for the convenience and accommodation of the town and the public, and for such appropriate uses, exclusive of the ferry right in Taylor, and not inconsistent with it, as are to be implied in the dedication of a narrow slip of open ground between the lots and a navigable river, which include the right of constructing wharves, and charging wharfage, which has never before been in contest between these parties.

It is scarcely necessary to say, that, in our opinion, the reservation to Taylor confers no new right not already existing in him, either because it had been expressly or tacitly retroceded by those who might have been entitled to it.

That the few inhabitants and lot owners might have tacitly conceded such right of ferry (if there was any) as they may have been entitled to under the original dedication, if it is not to be implied from the Act of 1795, which must have been understood as

reserving that right, is to be conclusively implied from the general acquiescence in the reservation of the right by that act, and from its exercise under claim of right, and without dispute or counter-claim, for more than thirty years, and is regarded as conclusively established by the decisions of this Court, and by its continued exercise to the present time. On the other hand, the evidence establishes the fact, that for all appropriate public purposes, except those pertaining to the ferry, and the right of ferry, the slip in question, though Taylor may have claimed the legal title since 1799, has been used by the town and its inhabitants and the public, without disturbance, with scarcely the shadow of a counter-claim, and with the general acquiescence of Taylor, and those claiming under him from the earliest history of the town. And this user, the particulars of which have been before stated, we consider not only as sufficient to sustain the public right under the dedication, but as being in itself sufficient to establish a dedication. As against James Taylor, the patentee, and his heirs, it might be assumed that the legal title passed to James Taylor, his son, if not by the deed of 1799, by long user and claim of the ferry right, as transferred by the deed of 1799, and at least to the extent necessary to sustain that right. But in whomsoever it may have been, and to whatever extent it was held to his use, so far as the ferry right was concerned, and beyond that, to the uses of the dedication.

It follows from these views, that in our opinion there was no error in dismissing the claim of the complainants to an account of wharfage, and the counter-claim of the City of Newport to an account of the profits of the ferry. Nor do we perceive any error in the refusal to decree a conveyance of the esplanade, or any part of the slip, to the City, because, if the legal title be in the complainants, or either of them, the unqualified conveyance prayed for might impair the ferry right, to which the City is not entitled, and a qualified conveyance is neither called for nor necessary to the enjoyment of her rights; and because, more especially if James Taylor, the testator, had the legal title to any extent, or farther than was necessary to sustain the ferry right, the parties by whom it could be conveyed are not before the Court. And to this extent the judgment is affirmed on the original and cross-appeal. But the judgment is erroneous in the extent to which it perpetuates the injunction, and to which it restrains the Commodore and the defendants in landing upon the slip in question persons and property transported from the Ohio shore, and in adjudging, as it seems to do, the exclusive right of ferrying from both sides of the river to be in the plaintiffs alone. The transportation as carried on, was illegal and properly enjoined, and the injunction should have been perpetuated against future transportation of a like kind, either under color of any license obtained, or to be obtained, from the authorities of the United States, under the existing laws, or without such license, unless

authorized to transport from the Ohio shore, from a ferry established on that side under the laws of that State, and they might have been restrained or prohibited, under all or any circumstances, from transporting persons or property from this to the other side, (within the interdicted distance above or below an established ferry on this side,) unless authorized under the laws of this State to do so; and the exclusive right of ferrying from the Kentucky side should have been declared to be in the plaintiffs.

Wherefore the judgment perpetuating said injunction, and adjudging the exclusive right of ferrying from both sides of the river to be in the plaintiffs, is reversed, and the cause as to that is remanded, with directions to perpetuate the injunction to the extent just indicated, and to adjudge the right as above directed.

And afterwards, to wit: On the 9th day of February, 1860, the following order was entered on the records of this Court:

City of Newport *vs.* Taylor's Executors, *et. al.* Judge Campbell.

It is ordered that the mandate be amended as follows: That the judgment perpetuating the said injunction is *reversed*, and the cause as to that is remanded, with directions to perpetuate the injunction to the extent just indicated, and to adjudge the right, as above directed.

STATE OF KENTUCKY, *set.*

I, R. R. Bolling, clerk of the Court of Appeals for said State, do certify that the foregoing five hundred and seven pages contain a true, full, and complete transcript of the Record and proceedings had in the case therein mentioned.

In testimony whereof, I have hereunto set my hand, and affixed the seal of office, this first day of August, 1860, and in the sixty-ninth year of the Commonwealth.

R. R. BOLLING,
Clerk Court of Appeals of Kentucky.

Transcript of this Record, - - -	$135 00
State Seal, - - - - -	1 00
Binding Transcript, - - - -	75
Total, - - - -	$136 75

Attest, R. R. BOLLING,
Clerk Court of Appeals of Kentucky.

To the Honorable James Simpson, Chief Justice of the Court of Appeals of the State of Kentucky.

Your petitioners, Peter Conway, John J. Simmons, John Sebree, Ernst Klinschmidt, Bernard Delmar, Joseph Schenburg, Thomas Dadsworth, Daniel Wolff, and the President and Common Council of the City of Newport, respectfully represent:

That, on or about the day of January, A. D. 1854, James Taylor, executor of the last will and testament of James Taylor, deceased, and Robert Air, filed their petition on the equity side of the Circuit Court for Campbell county, Kentucky, against these petitioners, in which, amongst other things, they charged that the petitioners were engaged in running a steamboat, called the "Commodore," between the City of Cincinnati, in the State of Ohio, and the City of Newport, in the State of Kentucky, and receiving money for the transportation of passengers and freight. The said plaintiffs further charged that your petitioners had received the sum of about seven hundred dollars for the transportation of freight and passengers during the time said steamboat "Commodore" had been plying between Cincinnati and Newport, as aforesaid.

And the said plaintiffs, in said petition, prayed the Court to enjoin your petitioners from running their said steamboat on the Ohio river, between said cities. That the injunction prayed for be made perpetual, and your petitioners be compelled to pay to said plaintiffs in said petition, said sum of seven hundred dollars, and the additional sum of one hundred and fifty dollars for wharfage.

To which petition your petitioners filed their answer, in which they alleged that their said steamboat "Commodore" had been duly licensed in pursuance of an Act of the Congress of the United States of America, entitled "An Act for Enrolling and Licensing Ships or Vessels to be employed in the Coasting Trade and Fisheries, and for regulating the same;" and they relied upon the provisions of said Act of Congress in defence of said action; and the said plaintiffs in said petition relied upon certain Acts passed by the General Assembly of Kentucky, regulating ferries on the Ohio river. And, upon the final hearing of said cause in the Circuit Court for Campbell county, the injunction that the plaintiffs obtained at the commencement of their said action was made perpetual; and thereupon the defendants (your petitioners) brought up the case, by appeal, to the Court of Appeals of Kentucky, which is the highest judicial tribunal of said State, and that Court, upon mature consideration, affirmed the judgment that had been rendered by the Circuit Court for Campbell county, aforesaid, and which judgment was final.

Your petitioners make known to your Honor, that in the trial

of said cause, both in the Circuit Court and Court of Appeals aforesaid, the validity of said Act of Congress, and its application to the questions presented by the pleadings aforesaid, became and was involved, and said Courts decided that said Act of Congress and the license that had been granted to your petitioners by the proper authority of the United States, afforded no protection to your petitioners, but that said Acts of the General Assembly of Kentucky were paramount to said Act of Congress. Wherefore, your petitioners pray that your Honor, as Chief Justice of the Court of Appeals, allow the Writ of Error, herewith presented, and that a citation be issued, requiring the said James Taylor, executor as aforesaid, and Robert Air, to be and appear in the Supreme Court of the United States, at its next December Term, to show cause, if any they can, why said judgment of the Court of Appeals of Kentucky, should not be reversed.

And your petitioners will ever pray, &c.

J. HARLAN,
Counsel for Petitioners.

THE UNITED STATES OF AMERICA.

The President of the United States of America, to the Judges of the Court of Appeals, in and for the State of Kentucky, greeting: That because in the record and proceedings, and also in affirming a judgment in equity of the Circuit Court for Campbell county, in the State of Kentucky, wherein James Taylor, executor of the last will and testament of James Taylor, deceased, and Robert Air, were plaintiffs, and Peter Conway, John J. Simmons, John Sebree, Ernst Klinschmidt, Bernard Delmar, Joseph Schenburg, Thos. Dadsworth, Daniel Wolff, and the President and Common Council of the City of Newport were defendants, and by the affirmance of said judgment manifest error hath intervened to the great damage of the said Peter Conway, John J. Simmons, John Sebree, Ernst Klinschmidt, Bernard Delmar, John Schenburg, Thomas Dadsworth, Daniel Wolff, and the President and Common Council of the City Council of Newport, as in their complaint has been alleged; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice be done to the parties in this behalf: You are hereby commanded, that if a judgment be given them under your seal, you distinctly and openly send the record and proceedings in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and Associate Justices of the Supreme Court of the United States, on the first Monday in December next, in the City of Washington, the present seat of the national government; that the record and proceedings aforesaid being inspected, that they may cause to be done thereupon what of right ought to be done.

Witness Roger B. Taney, Esq., Chief Justice of the Supreme Court of the United States, at the City of Washington, this 22d day of June, A. D. 1860, and in the 84th year of our Independence.

Attest JNO. A. MONROE.
C. C. C. K. D.

Allowed by
James Simpson, Chief Justice, Court of Appeals.

Know all men by these presents, that we, Peter Conway, John J. Simmons, John Sebree, Ernst Klinschmidt, Bernard Delmar, Joseph Schenburg, Thomas Dadsworth, Daniel Wolff, the President and Common Council of the City of Newport, and Amos Shinkle, are held and firmly bound unto James Taylor, executor of the last will and testament of James Taylor, deceased, and Robert Air, in the full sum of one thousand dollars, to be paid to the said Taylor and Air, their executors, administrators or assigns, to which payment well and truly to be make, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated this 22d day of June, A. D. 1860.

Whereas, lately at a term of the Court of Appeals of Kentucky, in a suit depending in said Court, wherein the above-named Conway, Simmons, Sebree, Klinschmidt, Delmar, Schenburg, Dadsworth, Wolff, and the President and Common Council of the City of Newport, were appellants, and James Taylor, executor of James Taylor, deceased, and Robert Air, were appelees, from a judgment in equity of the Circuit Court for Campbell county, Kentucky, the judgment of said Circuit Court was affirmed; and the said Conway and others, appellants aforesaid, having obtained the allowance of a writ of error and citation from the Chief Justice of the Court of Appeals of Kentucky, citing said Taylor and Air to be and appear before the Supreme Court of the United States, to be holden at Washington, the first Monday of December next. Now, the condition of the above obligation is such, that if the said Peter Conway, John J. Simmons, John Sebree, Ernst Klinschmidt, Bernard Delmar, Joseph Schenburg, Thomas Dadsworth, Daniel Wolff, and the President and Common Council of the City of Newport, shall prosecute their said writ of error to effect and answer all costs, if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

PETER CONWAY, [SEAL.]
AMOS SHINKLE, [SEAL.]
By R. R. BOLLING, C. C. A.

Signed and delivered in presence of
Approved by
James Simpson, Chief Justice Court of Appeals, State of Kentucky.

Know all men, that I, Amos Shinkle, of the County of Kenton, and State of Kentucky, do hereby authorize and empower the Clerk of the Court of Appeals of Frankfort, Kentucky, as my true and lawful attorney-in-fact, to execute in the Court of Appeals of Kentucky, or in the clerk's office thereof, any bond for costs that may be required, not exceeding the penalty of one thousand dollars, ($1000 $\frac{00}{100}$,) for myself and in my name, as surety of Peter Conway, John J. Simmons, John Sebree, Ernst Klinschmidt, Bernard Delmar, Joseph Schenburg, Thomas Dadsworth, Daniel Wolff, and the President and Common Council of the City of Newport, in a case lately pending in the Court of Appeals of Kentucky, on an appeal from the Campbell Circuit Court, wherein James Taylor, executor of James Taylor, deceased, and Robert Air, were plaintiffs, and said Peter Conway, and others above named, were defendants; said Peter Conway, and others, being about to sue out and obtain a writ of error to the Supreme Court of the United States, at Washington, to reverse the decree rendered by the Court of Appeals aforesaid, against the said defendants; and all the acts of my said attorney in the premises shall be binding on me, and I hereby ratify and confirm whatsoever my said attorney shall lawfully do therein. Witness my hand and seal, this day of June, 1860.

AMOS SHINKLE, [SEAL.]

Signed, executed, and acknowledged before me, by Amos Shinkle.

KENTON CIRCUIT COURT.

I am well acquainted with Amos Shinkle, and have often seen his signature; I believe the above to be his proper handwriting; Mr. Shinkle is good security in the cause referred to in the foregoing power of attorney. Witness my hand this 19th day of June, 1860.

N. B. STEPHENS, Cl'k,
Kenton Circuit Ct.

To James Taylor, executor of the last will and testament of James Taylor, deceased, and Robert Air.

Whereas, a writ of error hath been issued by the Clerk of the Eighth Circuit Court of the United States of America, in and for the Kentucky District, on behalf of Peter Conway, John J. Simmons, John Sebree, Ernst Klinschmidt, Bernard Delmar, Joseph Schenburg, Thomas Dadsworth, Daniel Wolff, and the President and Common Council of the City of Newport, returnable to the Supreme Court of the United States the first Monday of December next, to reverse a judgment in equity, decided in the Court of Appeals for the State of Kentucky, wherein the said Peter Conway, John J. Simmons, John Sebree, Ernst Klinschmidt, Bernard Delmar, Joseph Schenburg, Thomas Dadsworth, Daniel Wolff, and the President

and Common Council of the City of Newport, were appellants, and the said James Taylor, executor of the last will and testament of James Taylor, deceased, and Robert Air, were appellees. These are therefore to cite and command you, that you be and appear in the Supreme Court of the United States, at the City of Washington on the day aforesaid, then and there to hear the error assigned for the reversal of the said judgment, and to be heard, if anything you have to say upon the said writ of error.

Witness my hand as Chief Justice of the Court of Appeals of the State of Kentucky, this 22d day of June, A. D. 1860, and in the 69th year of the State.

JAMES SIMPSON.

Executed the within and foregoing citation, by delivering a true copy to James Taylor, executor of James Taylor, deceased, and Robert Air, this 10th day of July, 1860.

G. W. McDANNOLD, Jr., D. M.
For THOS. R. DEHONEY,
U. S. M. for K. District.

STATE OF KENTUCKY, to wit:

I certify that the foregoing petition, writ of error, bond, power of attorney, and citation, are truly copied from the originals filed in my office. Given under my hand as Clerk of the Court of Appeals, this 1st day of August, A. D. 1860.

R. R. BOLLING, Cl'k,
Court of Appeals of Kentucky.

1629